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

**Prepared By**



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# AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

This Agreement is by and between the Town of Johnstown, a Colorado home-rule municipality (“Owner”), and MWH Constructors, Inc., a Delaware corporation (“Construction Manager at Risk” or “CMAR”).

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

The Owner and CMAR hereby agree as follows:

## ARTICLE 1—THE PROJECT AND INITIAL WORK AUTHORIZATIONS

- 1.01 The Project, of which the CMAR Services and the Work under the Contract Documents are a part, is generally described as follows: **Johnstown Water Treatment Plant Expansion Project (“Project”)**.
- 1.02 The Owner and CMAR anticipate that there will be three Work Authorizations. At the time of the execution of this Agreement, the design phase of the Project is approximately 60 % complete. Despite the early stages of the Project, wherein the full scope is not yet known, the Owner and CMAR desire to move forward with two initial Work Authorizations. Work Authorization 1, which is attached hereto and incorporated herein by reference as Exhibit \_\_\_\_, relates to procurement of equipment to address long lead times. Work Authorization 2, which is attached hereto and incorporated herein by reference as Exhibit \_\_\_\_, relates to procurement of early construction activities. The Owner and CMAR are executing this Agreement to move forward with Work Authorization 1 and Work Authorization 2 and to generally govern the parties’ relationship when the full scope of the Project is known. The Owner and CMAR, however, reserve the right to modify certain terms of the Agreement by written agreement at a subsequent date when the design phase of the Project is complete or closer to completion.
- 1.03 When the Drawings and Specifications are approximately 90% complete, the Owner and CMAR anticipate negotiating and thereafter executing Work Authorization 3, which will cover the remaining portions of the Project. Concurrently therewith, the Owner and CMAR anticipate executing a Contract Amendment to set forth the Guaranteed Maximum Price of the Contract.

## ARTICLE 2— OWNER’S ADVISOR AND ENGINEER; OWNER’S PROJECT TEAM

- 2.01 The Owner has not retained a consultant to act as Owner’s representative, assume all duties and responsibilities of advisor to Owner and construction contract administrator on behalf of Owner, and have the rights and authority assigned to Owner’s Advisor in the Contract. Any reference to Owner’s Advisor in the Contract Documents shall be deemed to mean Owner. At any time subsequent hereto, the Owner may, at its sole discretion, retain a third-party consultant to act as the Owner’s Advisor and perform the duties and responsibilities assigned to Owner’s Advisor pursuant to the Contract Documents.
- 2.02 Unless otherwise modified by the Owner by written notice to CMAR, at the Owner’s discretion, the Owner has retained Burns & McDonnell Engineering Company, Inc. a Missouri Corporation (Engineer) to design the Project, to assume all duties and responsibilities of Engineer during the construction of the Project, and to have the rights and authority assigned to Engineer in the CMAR Contract.

## ARTICLE 3—CMAR SERVICES

- 3.01 Scope of CMAR Service. On or about February 6, 2023, the Owner and CMAR executed a Professional Services Agreement (“PSA”) that governs the CMAR Services, a copy of which is attached hereto and incorporated herein

by reference as Exhibit A. This Agreement and the PSA shall be read harmoniously. To the extent of a conflict, the provisions of this Agreement shall control.

#### **ARTICLE 4—COMPENSATION FOR PERFORMANCE AND COMPLETION OF THE WORK**

- 4.01 Owner shall compensate CMAR for performance and completion of the Work in accordance with the Contract Documents. Payment for Work will consist of the following:
- A. Payment for Construction Support Costs in accordance with Article 5, and as set forth in the Exhibits B & D
  - B. Payment for Cost of the Work as provided in Article 6; and
  - C. Payment of a CMAR Fee as set forth in Article 7 and in Exhibit A
- 4.02 This Agreement establishes a CMAR Contingency Allowance for use in paying for unforeseen costs as set forth in Article 8.
- 4.03 The amounts for CMAR's compensation summarized in Paragraph 4.01 are subject to additions and deletions as provided in the Contract, up to limitations established in the Guaranteed Maximum Price (GMP) as provided in Article 11.

#### **ARTICLE 5—CONSTRUCTION SUPPORT COSTS**

- 5.01 Construction Support Costs
- A. Construction Support Costs (field overhead or "general conditions" costs) are those costs associated with and in support of construction that are not directly related to specific construction activities. Construction Support Costs are not compensable as Cost of the Work and may be included by CMAR in proposed Work Authorizations that occur outside the GMP schedule submitted to the Owner for approval and issuance. Construction Support Costs include without limitation:
    - 1. CMAR project management costs, including project managers, superintendents, field engineering staff, and clerical support located at the Site;
    - 2. Management of Subcontractors and Suppliers;
    - 3. Management of delegated professional design services, if any;
    - 4. Costs associated with safety programs, including safety managers and safety representatives;
    - 5. Quality management not specifically designated to be covered in a Work Authorization;
    - 6. Costs associated with obtaining permits, or paying patent fees or royalties, if not specifically designated to be covered in a Work Authorization;
    - 7. [Intentionally omitted];
    - 8. Compliance with Laws and Regulations;
    - 9. [Intentionally omitted]
    - 10. Contract administration costs, including costs for:
      - a. Meetings, reporting, notifications, and other communications and coordination,
      - b. Document management,
      - c. Submittals, record data, and other documentation,
      - d. Creating and maintaining Project schedules per Article 4 of the General Conditions,
      - e. Changes to the CMAR Contract per Article 11 of the General Conditions,

- f. Applications for Payment per Article 15 of the General Conditions,
  - g. Maintenance of Record Documents, and
  - h. Other contract administration costs included in the Contract Documents;
11. Performance, payment, and warranty bonds, if any, provided to cover the construction of the entire Project;
  12. General insurance costs, excluding Builder’s Risk or other coverage that applies specifically to Work and specifically designated to be covered in a Work Authorization, and Worker’s Compensation Insurance which is to be included in payroll cost per Paragraph 6.02.A.1;
  13. Costs associated with CMAR temporary facilities and temporary infrastructure at the Site;
  14. The cost of purchasing, renting, or furnishing small tools and hand tools. These are defined as any tool or equipment whose current price, if purchased new at retail would be less than \$500 **[or insert other threshold price]**;
  15. Costs for site maintenance, storage of materials, waste disposal, environmental controls, management of water, protection of site and adjacent property, cleaning during construction and final cleaning;
  16. Costs associated with startup and commissioning of the Work, including training of Owner’s personnel, temporary operation of facilities by the CMAR; and performance acceptance testing, if any;
  17. Costs associated with substantial completion, partial utilization, and final completion; and
  18. Costs associated with general warranty, guarantees and correction of defective work during the Correction Period.
- B. The organization of the Work into Work Packages will not result in changes to the CMAR’s compensation for Construction Support Costs.
  - C. The CMAR shall exclude sales and use taxes from all Work Authorizations and the GMP proposal. The Project is located within the jurisdictional limits of the Town of Johnstown, Colorado and the Owner shall provide the CMAR with a sales and use tax exemption for the use with contracting with subcontractors and suppliers. If any sales and use taxes are assessed despite the efforts of CMAR to exclude such taxes and with prior written notice and approval of the Town, the amounts will be an adjustment to the GMP by a change order.

## ARTICLE 6—COST OF THE WORK

### 6.01 Purposes for Determination of Cost of the Work

- A. The term Cost of the Work is defined in the General Conditions, Article 1, as the sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement; such provisions are set forth in this Article 6. Cost of the Work is determined for each Work Authorization, subject to any limits described in this Article. The provisions of this Article are used for two distinct purposes:
  1. To determine Cost of the Work for purposes of CMAR’s base compensation for construction under this Contract; or
  2. When needed to determine the value of a Change Proposal, Change Order, Claim, set-off, or other adjustment to the Guaranteed Maximum Price. When the value of any such adjustment is determined based on Cost of the Work, CMAR is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. For purposes of determining CMAR’s base compensation, Cost of the Work applies only to Work that has been duly authorized in a Work Authorization.

C. The Cost of the Work will include only those items identified in Paragraph 6.02.

## 6.02 Cost of the Work

- A. Payroll Cost—Payroll costs for employees in the direct employ of CMAR performing Work described in Work Authorizations, and excluding those efforts covered in Construction Support costs per Paragraph 5.01. Payroll costs will be based on actual amounts paid as indicated on Certified Payroll reports. Payroll costs are to include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturdays, Sundays, or legal holidays, will be included in the above to the extent authorized by Owner in writing.
- B. Incorporated Equipment and Material Cost—Cost of all materials and equipment furnished or incorporated in the Work, including costs for transportation and storage prior to delivery to the Site. Cost for proper storage at the Site is to be included in Construction Support Cost per Paragraph 5.01. Cost for equipment is to include Suppliers' services for submittals, factory and field testing and inspections, installation checks, start-up assistance, and training, if any. All cash discounts accrue to CMAR unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner.
- C. Consumable Equipment and Material Cost—Cost, including transportation and maintenance, of all materials, supplies, equipment, tools, and machinery at the Site, which are consumed in the performance of the Work, less market value of such items used but not consumed which remain the property of CMAR. In establishing costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. CMAR will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such items.
- D. Subcontractor Cost—Payments made by CMAR to Subcontractors for Work performed by Subcontractors. CMAR shall obtain competitive bids from subcontractors acceptable to Owner and CMAR and shall deliver such bids to Owner, which will then determine, with the advice of Owner's Advisor, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as CMAR's Cost of the Work and fee as provided in this Article 6.
- E. Construction Equipment Cost—Cost of providing construction equipment and machinery to construct the Work described in the Work Authorization.
1. Include all the costs for transporting, loading, unloading, assembly, dismantling, and removal of the equipment and machinery with Consumable Equipment and Material Cost per Paragraph 6.02.C.
  2. Construction equipment and machinery cost will be billed at rates approved by the Owner's Advisor as part of each Work Authorization.
    - a. All operating costs will include costs for fuel, maintenance, parts, and associated labor. Billing rates for equipment fueling and maintenance do not include payroll costs for equipment operators, which will be included in Payroll cost per Paragraph 6.02.A.
    - b. Costs for equipment and machinery owned by CMAR or a Subcontractor cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>). Hourly rates will be as shown in EquipmentWatch or mutually agreed upon by CMAR and Owner. These rates will include all operating costs per Paragraph 6.02.E.2.a.
    - c. Payment for rented equipment will be in accordance with rental agreements as to price, including any surcharge or special rates applicable to overtime use of the construction equipment or

machinery, and all such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- d. No markup is allowed on equipment rented or leased from any company owned in total or in part by CMAR or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to CMAR or Subcontractor, since markups are included in rental or lease rates.
  - e. Equipment used for site maintenance is to be included in Construction Support Costs. Equipment used for multiple Work Authorizations must be billed on the basis of time worked on each Work Authorization.
3. With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Guaranteed Maximum Price (changed Work), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

F. Supplemental Costs which consist of the following:

1. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in the discharge of duties connected with the Work Authorization.
2. Costs of special consultants including engineers, architects, testing laboratories, and surveyors, employed or retained for services specifically related to the Work Authorization and expressly excluding costs incurred by consultants performing CMAR Services.
3. [Intentionally omitted]
4. Deposits lost for causes other than the negligence or willful misconduct of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
5. Royalty payments and fees for permits, patents, and licenses directly related to a Work Authorization.
6. The cost of premiums for performance, payment, and warranty bonds obtained by CMAR as a requirement of a Work Authorization, in addition to the bonds purchased for the construction as a whole within the scope of Construction Support Costs per Paragraph 5.01.A.11. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
7. Cost for any Subcontractor bonds that must be required to protect Owner's and CMAR's interests in the event of a Subcontractor default associated with a Work Authorization. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
8. The cost of premiums for Builder's Risk insurance and other Work Authorization-specific insurance that CMAR is required by the Contract Documents to purchase and maintain, but not including costs of commercial general liability, automobile liability, and contractor's pollution liability insurance which are covered as Construction Support Costs per Article 5. The compensation for worker's compensation is included as part of payroll costs per Paragraph 6.01.A.1. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

6.03 Specific Exclusions from Cost of the Work

- A. The following items are not included in the Cost of the Work. This express itemization does not confer Cost of the Work or compensable status to otherwise ineligible items not listed here. Cost for any items not included in the Cost of the Work are to be included in the CMAR Fee unless specifically itemized at Construction Support Costs described in Article 5.

1. [Intentionally omitted]
2. Expenses of CMAR's principal and branch offices.
3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against CMAR for delinquent payments.
4. Costs due to the negligence or willful misconduct of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
5. Cost for the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property not paid from CMAR's Contingency per Article 8.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 6.03.
8. Costs recovered or reimbursed under other Construction Support Cost or Cost of the Work provisions.

6.04 Compensation for the Cost of the Work

- A. Compensation for the Cost of the Work is based on the amount earned for Work completed for each Work Authorization.

**ARTICLE 7—CONSTRUCTION MANAGER AT RISK FEE**

7.01 The CMAR Fee will be determined as follows:

- A. The CMAR Fee is a specified percentage of the Cost of the Work as shown in Exhibit A. No fee will be payable on the basis of costs itemized as excluded in Paragraph 6.03.

**ARTICLE 8—CMAR CONTINGENCY ALLOWANCE**

8.01 CMAR Contingency Allowance

- A. The CMAR Contingency Allowance funds are for the exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued.
- B. The CMAR Contingency Allowance funds may be used by CMAR for costs sustained by either CMAR itself or a Subcontractor, at CMAR's discretion. The CMAR contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Contract.
- C. Without excluding other possible uses of the CMAR Contingency Allowance, the following uses are expressly acknowledged as eligible uses of the CMAR Contingency Allowance funds:
  1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work;
  2. Corrective work, regardless of fault if non-conformance is unintended;
  3. Subcontractor defaults;
  4. Overruns in Construction Support Costs;
  5. Builder's Risk deductibles;
  6. Verified excusable errors in estimates;
  7. Non-compensable overtime and other acceleration costs; or

8. Bidding scope gap.
- D. CMAR shall not utilize the CMAR Contingency Allowance if CMAR recovers funds (1) from bonds and insurance coverage payments for such expenditures or (2) from defaulting Subcontractors or Suppliers for such expenditures.
  - E. The CMAR Contingency Allowance will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency Allowance, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.
  - F. The CMAR Contingency Allowance will not be used to recover the cost of items that are compensable as a Cost of the Work.
  - G. The CMAR Fee does not apply to expenditures from the CMAR Contingency Allowance.
  - H. The designated CMAR Contingency Allowance, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency Allowance or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency Allowance.
  - I. CMAR will submit applications for reimbursement from the CMAR Contingency Allowance to Owner's Advisor, in a format acceptable to Owner's Advisor, together with appropriate documentation. The Owner shall have ten (10) business days to review and approve use of the CMAR Contingency Allowance, which approval shall not be unreasonably withheld or conditioned. If approved, payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.
  - J. The CMAR Contingency Allowance will be established at the time of establishment of the GMP. Upon agreement of the Owner and CMAR, a CMAR Contingency Allowance may be included in Work Authorization 1 and Work Authorization 2. If a Contingency Allowance is included in the Work Authorizations, Owner and Contractor may agree prior to final completion of a Work Authorization to allow remaining unused contingency to be applied as contingency for the next or subsequent Work Authorization or the GMP.

## **ARTICLE 9—WORK AUTHORIZATIONS**

### **9.01 General Provisions Regarding Work Authorizations**

- A. Work Authorizations will be based on Work Packages prepared by CMAR describing equipment and materials to be purchased for installation or Work to be performed in accordance with the approved Work Authorization.
- B. All Work to be provided by CMAR must be authorized by the Owner in an approved Work Authorization specifying or referencing the scope of Work to be conducted.
- C. The Owner and CMAR must approve each Work Authorization in writing.
- D. The Work Authorization will indicate the not to exceed compensation to which CMAR is entitled for providing the authorized Work.
- E. CMAR is not entitled to compensation for providing Work that Owner has not authorized.
- F. For cost savings realized in a Work Authorizations, Owner and Contractor agree prior to final completion of a Work Authorization to allow remaining unused funds to be applied as either a deductive change order or Owner Contingency for the next or subsequent Work Authorization or the GMP.

### **9.02 First Work Authorization**

- A. The first Work Authorization, authorizing the commencement of construction, will include, in addition to authorization for a specific Work Package, or multiple specific Work Packages, the authorization of

expenditures by CMAR for Contract-specific (1) performance and payment bond premiums (2) Builder's Risk premiums, if CMAR is required to purchase and maintain Builder's Risk insurance, and (3) premiums for other specific insurance policies required by the Contract.

## **ARTICLE 10—PROCUREMENT OF SUBCONTRACTORS; CMAR SELF-PERFORMANCE OF AUTHORIZED WORK**

### **10.01 Performance of the Authorized Work**

- A. CMAR will solicit and receive competitive bids on the Work included in each Work Authorization, including the purchase of materials and equipment. CMAR will prepare bid packages supporting the Work Authorization and make opportunities available to Subcontractors and Suppliers in a way that will increase competition and allow bids by trade contractors or specialty entities. CMAR may prepare bid packages for Work the CMAR may wish to self-perform, so long as doing so will not limit bidding by competing bidders (prospective subcontractors).
- B. CMAR may negotiate on Work Packages, or portions thereof, if fully qualified to self-perform the subject Work
- C. [Intentionally omitted]
- D. CMAR will award the subcontract for the Work under the Work Authorization to the responsible bidder submitting the lowest responsible and responsive bid for that portion of the Work for which bids are received. CMAR may self-perform Work when CMAR is the low bidder.

## **ARTICLE 11—GUARANTEED MAXIMUM PRICE**

11.01 Subject to the provisions of Article 4, CMAR guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the amounts for Paragraphs 11.01.A through D that follow will be the binding GMP established by the process stated in Paragraphs 11.02 and 11.03.

- A. Construction Support Cost Amount (Article 5);
- B. Cost of the Work (Article 6);
- C. CMAR Fee (Article 7); and
- D. CMAR's Contingency Allowance Amount (Article 8).

11.02 [Intentionally omitted.]

11.03 A binding GMP will be established at any time agreeable to Owner and CMAR, but not later than the time when the Drawings and Specifications are 90% complete. The GMP shall be set forth in an agreed upon Contract Amendment.

- A. The Work Packages released and authorized prior to 90% completion of the Drawings and Specifications shall be counted when calculating the time period establishment of the GMP.
- B. If the Work will be authorized over time, as the design for individual Work Packages is completed, in a series of incremental Work Authorizations (fast tracking or similar design/construction process) then the binding GMP will be developed in a series of incremental changes as the design for each Work Package reaches 90% completion, culminating, when all Work Packages have been authorized, in a binding GMP for the Contract.

11.04 Owner's Appropriation

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, the Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless the Owner provides written

assurance to CMAR that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Contract.

#### 11.05 Conversion of Cost of Work to a Lump Sum Amount

- A. If Owner and CMAR mutually agree, compensation for all Work on the Project, or for any Work Authorization, may be converted to a lump sum (stipulated amount). If compensation for all Work on the Project is converted to a lump sum amount, this lump sum amount will include costs for Construction Support Cost, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount.
- B. If a Work Authorization is converted to a lump sum amount, this lump sum amount will include costs for Cost of the Work, the CMAR Fee, and all other costs associated with the Work Authorization, all as if bid as a lump sum amount; provided, however, that Construction Support Costs will continue to be compensated per Paragraph 5.05.
- C. The following will continue to apply for conversions to lump sum covered in Paragraphs B and C:
  - 1. The Cost of the Work provisions in Article 6 will continue to apply to pricing certain Change Orders and other similar matters, as set forth in Paragraph 6.01.A.2.
  - 2. Construction Support Costs Extended Rate provisions of Paragraph 5.04 will continue to apply for Change Orders.
  - 3. Owner's Contingency will continue to be available per Article 12.

### **ARTICLE 12—OWNER'S CONTINGENCY ALLOWANCE**

#### 12.01 Owner's Contingency Allowance

- A. Owner's Contingency Allowance is used at the sole discretion of the Owner to cover unforeseen costs, Owner-directed changes in the scope of the Work, or any other unanticipated change in the Contract Price. These funds can only be accessed by the CMAR when and to the specific extent authorized by the Owner.
- B. The Owner's Contingency Allowance is to be included in the Contract Amount awarded but is not part of the CMAR's GMP.

### **ARTICLE 13—PAYMENT PROCEDURES**

#### 13.01 Submittal and Processing of Payments

- A. Billing and payment for CMAR Services are addressed in Article 3. The provisions in this Article 13 pertain to billing and payment for the Work.
- B. CMAR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of the CMAR Fee then payable. Applications for Payment will be processed by Owner's Advisor as provided in the General Conditions.

#### 13.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of CMAR's Applications for Payment as recommended by Owner's Advisor within thirty (30) days after approval of an Application for Payment.
- B. Progress payments on account of the Cost of the Work.
  - 1. Prior to Substantial Completion of the Work, including for each Work Authorization, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. Ninety-five percent (95%) of the value of the Work completed, with the balance being retainage.
- b. Ninety-five percent (95%) of cost of materials and equipment not incorporated in the Work, with the balance being retainage.

13.03 2. Upon completion of the Work under a Work Authorization, including completion of all punch list items, on the condition that the Work Authorization, or portion thereof contains a substantial completion date for such Work and CMAR completed the Work by such date, Owner shall pay an amount sufficient to increase total payments to CMAR for the labor and materials portion of the Work (not the early procurement of the equipment) to 100% percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.02.E of the General Conditions and subject to compliance with the Colorado Public Works Act, Section 38-26-101, et seq., C.R.S.Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Article 15 of the General Conditions and the law.

13.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless CMAR submits written consent of the surety to such payment, return, or release.

13.05 Interest

- A. All undisputed amounts not paid when due will bear interest at the rate of [number] percent per annum.

#### **ARTICLE 14—DOCUMENTATION AND AUDIT**

14.01 Documentation

- A. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Contract, CMAR and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices.
- B. CMAR will provide documentation of all Costs of the Work with the Application for Payment as directed by the Owner's Advisor.

14.02 Audit

- A. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all CMAR's accounts, records, books, correspondence, instructions, drawings, receipts, and similar data relating to the Cost of the Work and the CMAR Fee. CMAR shall preserve all such documents for a period of three years after the final payment by Owner. Subcontractors performing Work on a Cost of the Work basis will afford such access to Owner, and preserve such documents, to the same extent required of CMAR.

#### **ARTICLE 15—CONTRACT TIMES**

15.01 [Intentionally omitted]

15.02 Contract Times—Days

- A. The Owner and CMAR shall agree upon the date when the Work will be substantially complete at the time of establishment on the GMP and the concurrent execution of a Contract Amendment.
- B. The number of days in which the Work will be substantially complete, and in which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15. Completion dates for specified portions of the Work, if applicable, may be set out in Work Authorizations or Change Orders.

### 15.03 Liquidated Damages

- A. CMAR and Owner recognize that Substantial Completion of the Work, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and CMAR agree that as liquidated damages for delay, but not as a penalty:
1. Substantial Completion – CMAR shall pay Owner \$1,500.00 for each day that expires after the time, as duly adjusted pursuant to the Contract, specified above for Substantial Completion, until the Work is substantially complete.
  2. Completion of Remaining Work – After Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, as duly adjusted pursuant to the Contract, for completion and readiness for final payment, CMAR shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Milestones CMAR shall pay Owner the amount specified in Paragraph 15.05 for each day that expires after the time, as duly adjusted pursuant to the Contract, specified for achievement of each Milestone, until that Milestone is achieved.
  4. If Owner recovers liquidated damages for a delay in completion of the Project or a then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages, if any, specified in this Agreement.
- B. Bonus: CMAR and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and CMAR agree that as a bonus for early completion, Owner shall pay CMAR \$100.00 for each day prior to the time specified above for Substantial Completion, as duly adjusted pursuant to the Contract, that the Work is substantially complete. The maximum value of the bonus will be limited to \$500.00.

### 15.04 [Intentionally omitted]

### 15.05 Milestones and Associated Damages

- A. Work required to be complete to meet the following Milestone(s) will be included in a separate Work Authorization, if at all, or established with the GMP and set forth in a Contract Amendment.

## ARTICLE 16—CONTRACT DOCUMENTS

### 16.01 Contents

- A. The Contract Documents consist of all of the following:
1. This Agreement.
  2. General Conditions.
  3. Supplementary Conditions.
  4. General Requirements (Division 01 of the Specifications.)
  5. Drawings and Specifications completed as of the Effective Date of the Contract: **[itemize or incorporate list]**.
  6. Exhibits to this Agreement (enumerated as follows):

- a. Exhibit A, Scope of CMAR's Services;
  - b. Exhibit B, Work Authorization 1
  - c. Exhibit C; Work Authorization 2
  - d. Exhibit D; Work Authorization 3 - GMP
  - e. **[List other exhibits, if any].**
7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Contract Amendments;
  - b. Executed Work Authorizations, including any exhibits identified as Drawings, Specifications, or other Contract Documents;
  - c. Work Authorization Modifications;
    - 1) Work Change Directives;
    - 2) Change Orders; and
    - 3) Field Orders.
  - d. Performance and Payment Bonds; and
  - e. Warranty Bonds, if any.
- B. There are no Contract Documents other than those listed above in this Article 16.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 17—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **17.01 CMAR's Representations**

- A. To induce Owner to enter into this Contract, CMAR makes the following representations:
1. CMAR has examined and carefully studied the Contract Documents, including Addenda.
  2. CMAR has visited the Site, is familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. CMAR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. CMAR has studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. [Intentionally omitted]
  6. CMAR has considered the information known to CMAR itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract **[Proposal]** Documents; with respect to the effect of such information, observations, on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR; and (c) CMAR's safety precautions and programs.
  7. [Intentionally omitted]

8. CMAR is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. CMAR will provide Owner's Advisor written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Owner's Advisor is acceptable to CMAR. If CMAR performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to Owner, CMAR shall assume responsibility for such construction activity and shall bear the costs attributable to any necessary correction.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. CMAR's entry into this Contract constitutes representation by CMAR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 17.02 CMAR's Certifications

- A. CMAR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 17.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Contract to the detriment of Owner, (b) to establish proposal Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish proposal prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.



Address for giving notices:

450 S. Parish Avenue

P.O. Box 609

Johnstown, CO 80534

Designated Representative:

Name: Ellen Hilbig

*(typed or printed)*

Title: Utilities Director

*(typed or printed)*

Address:

450 S. Parish Avenue

P.O. Box 609

Johnstown, CO 80534

Phone: 970.578.9619

Email: ehilbig@johnstownco.gov

*(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Address for giving notices:

8001 Arista Pl Suite 500

Broomfield, CO 80021

Designated Representative:

Name: Tom Paul

*(typed or printed)*

Title: Director of Business Development

*(typed or printed)*

Address:

8001 Arista Pl Suite 500

Broomfield, CO 80021

Phone: 720.547.5354

Email: Tom.paul@mwhconstructors.com

License No.: \_\_\_\_\_

*(where applicable)*

State: \_\_\_\_\_

**EXHIBIT A: SCOPE OF CMAR SERVICES**

**TOWN OF JOHNSTOWN  
PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered into this 6 day of February 2023 (the "Effective Date") by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the "Town") and MWH Constructors, Inc., a Foreign Corporation ("Contractor") (collectively, the "Parties").

**RECITALS**

**WHEREAS**, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference ("Services"), to the Town; and

**WHEREAS**, the Parties wish to memorialize their contractual relationship.

**AGREEMENT**

**NOW, THEREFORE**, incorporating the foregoing Recitals herein and in consideration of the mutual promises, agreements, undertakings and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

**SECTION 1: PARTIES**

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement.

**SECTION 2: SERVICES, COMPENSATION AND TERM**

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor's performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town

without the Town's prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2023 and shall not extend beyond that date absent the written approval of the Town.

### **SECTION 3: OPERATIONS**

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town

### **SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

#### **4.01 Insurance.**

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers' compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Contractor's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to Town under this Agreement; and
4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages

listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. A certificate of insurance shall be completed by Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, defend, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person.

## **SECTION 5: TERMINATION**

5.01 Termination. [The Town or Contractor] may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to [Contractor/the other Party]. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

## **SECTION 6: INDEPENDENT CONTRACTOR**

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the

Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

## SECTION 7: NOTICE

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail ("email") return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:  
Town of Johnstown  
Attn: Ellen Hilbig  
450 S. Parish Avenue  
P.O. Box 609  
Johnstown, CO 80534  
Email: ehilbig@johnstownco.gov

TO CONTRACTOR:  
MWH Constructors Headquarters  
Attn: Tom Paul  
8001 Arista Pl Suite 500,  
Broomfield, CO 80021  
Email: tom.paul@mwhconstructors.com

## SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by Contractor in the performance by Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

8.11 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of

legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Contractor.

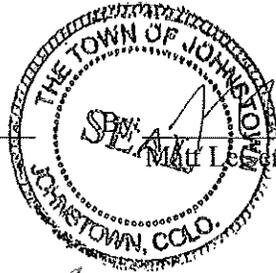
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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: Hannah Hill  
Hannah Hill, Town Clerk



Sean Matthews  
Sean Matthews, Town Manager

MWH CONSTRUCTORS, INC

By: Blair Lavoie  
Name: Blair Lavoie  
Title: President/CEO

STATE OF COLORADO)  
) ss  
COUNTY OF Branche (P)

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of February, 2023, by Blair Lavoie as the President/CEO of MWH Constructors, Inc.

WITNESS my hand and official seal.

My commission expires: 07/05/2026

**JANET JACOBSON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20024020351  
MY COMMISSION EXPIRES JULY 5, 2026**

Janet Jacobson  
Notary Public

**EXHIBIT A**  
**SERVICES**

## **RFP: SCOPE OF DESIGN PHASE SERVICES**

The selected CMAR will be provided separate contracts for design phase services and construction phase services with the Town. The design phase services agreement will provide for specific services and compensation for project team activities other than construction phase services. The proposed Design Phase services and activities are listed below.

- Participate as a member of the project team in evaluating alternative facility arrangements, construction materials, and sequencing of construction which may affect the selection, design and arrangement of project components.
- Provide input and feedback regarding comparative cost of implementation of required facilities as defined by the project team.
- Provide value engineering assistance to determine options that may reduce the total construction costs of the project (for example, help determine site layout efficiencies or phasing of the project that will reduce total costs).
- Assist and participate as a member of the project team through the completion of construction documents providing a project schedule at approximately two or three additional intervals during completion of the drawings and specifications.
- Assist and participate in any early procurement packages identified by the project.
- Identify appropriate subcontractors and material suppliers that will be invited to participate/bid in the pricing and/or construction of the project. Suitability will be determined by concurrence of the entire project team.
- Assist and participate as a member of the project team through completion of construction documents providing an estimate of probable costs at approximately one or two additional intervals during completion of the drawings and specifications.
- Participate as a member of the project team in the completion and approvals of required permits including building code compliance for the proposed design and construction as needed. This will be a responsibility of the CMAR who shall meet the contractor licensing requirements of the Town.
- Based on a mutually agreed upon completion level of the drawings and specification (for example, 90% design), prepare a final construction project cost in the form of a guaranteed maximum price (GMP). The Town may accept the GMP and use it as a cost basis for the CMAR contract, or reject the GMP, which would terminate the design phase agreement. The Town also reserves the right to compare the GMP independently to ensure the project cost is reasonable.
- The CMAR firm may be requested to commence construction in phases, before Construction Drawings and Specifications are completed. Therefore, pricing of any individual tasks prior to the GMP construction shall be substantiated as an additional service request basis with the predetermined parameters, process and procedures. Allowances for certain tasks or equipment items may be necessary.
- Other required services for project completion outlined in the CMAR Contract.

## TAB C: COST PROPOSAL:

As part of the CMAR Construction Phase Contract negotiations the scope of the work and GMP will be established. The project is being funded by Town reserves. It is the Town's intention to minimize the final cost to complete project. Any savings will be accrued to the Town. There is potential that alternative funding sources for the Project may become available. Town may pursue these funding sources and as a result be required to publicly bid the construction services for the Project. Respondents to this RFP are made aware that the CMAR selection, construction schedule, funding, and other services may be revised per the outcomes of the Infrastructure Bill. Contractor will work with design team to value engineer costs to meet the Town's budget.

### ▪ Design Phase Services:

Provide hourly rates for the proposed key project staff from your firm (and subcontractors if necessary) for assistance to the project design team during the design phase of a project. Present these rates in a unit pricing format for each of the CMAR's representatives, staff members, and/or subcontractors that are proposed to participate as members of the project team in the design phase activities.

Provide a total design phase budget based on the following:

1. Project kick-off meeting: 1 meeting, 4-hours each
2. Progress Meetings: 1hr each Bi-Weekly – assume 18
3. Project Design Workshops: 2x each month in person , 3-hours each – assume 18
  - a. Schedule & Sequencing Workshop: 60% & 90%
  - b. Value Engineering Workshop: 60% & 90%
  - c. Risk & Opportunity Assessment Workshop: 60% & 90%
4. Design Review & Procurement Plan/Packages: 60% & 90% - assume 80 hours
5. In-house project estimating and other design phase services: - assume 120 hours
  - a. 60% Project Budget & Construction Cost Development:
  - b. 90% GMP Project Budget & Construction Cost Development:
6. Other costs if the CMAR considers inclusive of design phase services; e.g., reproductions, travel time, that it should be compensated.
  - a. Condition Assessment for DAF Building Upgrades – assume 40 hrs

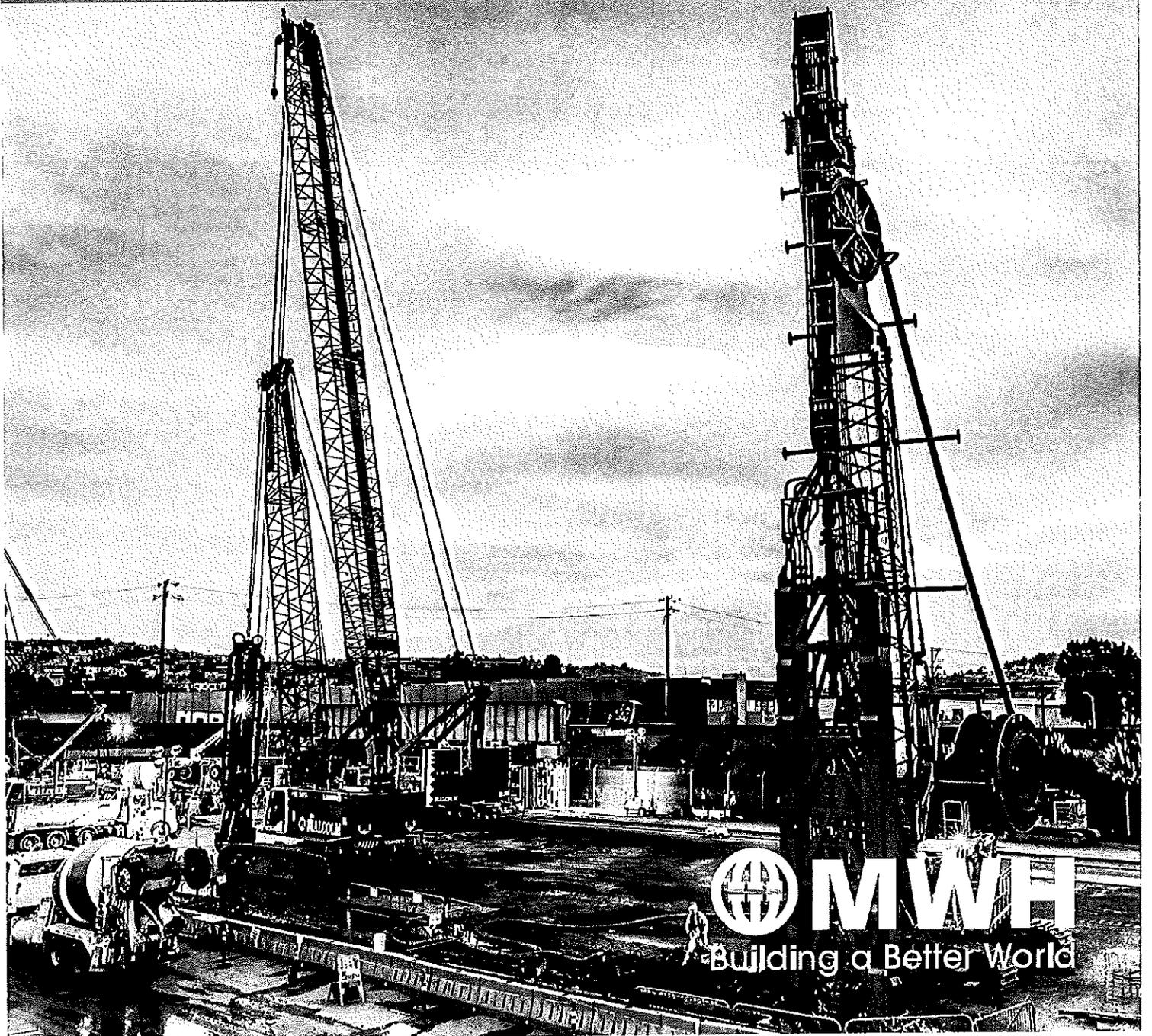
### GMP Approach:

Discuss how the GMP will be determined for construction phase of the project. In addition, included as supplement to the GMP Approach; provide the following:

1. Itemized unit labor cost for personnel on the CMAR's staff expected to be involved in the project; i.e., cost per hour by job title or labor classification. Itemize for each labor category the unit payroll cost and the direct labor overhead cost applicable to each labor hour charged.
2. Provide the factor, percentage or lump sum, or other manner of pricing of the CMAR's general overhead required to be compensated during the construction phase.
3. Provide a detailed description and manner of determination of the CMAR's fee and/or profit factor desired to be attained and priced in the GMP.

4. Describe your approach to developing a cost to complete this project. How will this affect your firm's design input?
5. Describe contingency, how it is managed, and use of contingency.
6. Describe your approach to developing value engineering ideas through construction delivery to enhance the work product while potentially saving cost.
7. Provide an itemization, if any, of CMAR's overhead, fee, and/or profit to be applied to both materials and subcontractor costs incorporated into the project.
8. Provide an itemization of the CMAR's proposed equipment and temporary facilities to be used and/or installed at the project site together with applicable unit pricing proposed for compensation throughout the project. Examples include company owned vehicles, field office, storage facilities, toilet(s), dumpster(s)/ debris disposal. Include any project specific operation and maintenance costs (communication services/equipment, employee accommodations. When describing equipment, address owned, leased or rented equipment. Include a description and example of the way a "small tool allowance" and expendable tools and parts will be compensated.
9. Describe the approach, general facilities, and basis of compensation for construction and maintenance of a temporary power system during construction.
10. Describe any additional cost elements or factors applied to project labor, materials, equipment or subcontractor's costs to determine the GMP.
11. Itemize and describe the rates and/or other cost factors in providing comprehensive general liability, auto liability, and builders risk insurance during the construction period.
12. Describe and itemize the rate applicable to this project which will be utilized to determine the payment and performance bond premiums for the project.
13. Itemize those factors involved in change orders, contract modifications order and/or adjustments to the GMP including supervision allowance (i.e., percentage of direct labor hours, cost or other approach), labor and material markups and overhead and profit percentages if they are different than the factors used in determining the initial GMP.

# C. COST PROPOSAL



 **MWH**  
Building a Better World

**DESIGN PHASE SERVICES PROPOSED RATES**

MWH CONSTRUCTORS

Town of Johnstown, Water Treatment Plant Expansion Project  
 CMAR Design Phase (Preconstruction) Services - Cost Proposal  
 Date: Dec. 1, 2022

**Design Phase, Preconstruction Services Cost Proposal Summary**

Description	Project Executive <i>Tom Peal</i>		Preconstruction Manager <i>Tom Peal</i>		Project Manager <i>Kara Barmann</i>		Superintendent <i>Tyler Hendrix</i>		Electrical Superintendent <i>Victor Ebers</i>		Lead Estimator <i>Brett Henderson</i>		Quality Engineer <i>TBD</i>		Safety Engineer <i>TBD</i>		Total
	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	
1. Project kick-off meeting: 1 meeting, 4-hours each			4		4		4		4		4						20.0
Subtotal (Hours):	0.0		4.0		4.0		4.0		4.0		4.0		0.0		0.0		20.0
Subtotal (Cost):	\$0		\$749		\$519		\$508		\$482		\$535		\$0		\$0		\$2,793
2. Progress Meetings: 1hr each Bi-Weekly -- assume 18 meetings			18.0		18.0		9.0		9.0		9.0						63.0
Subtotal (Hours):	0.0		18.0		18.0		9.0		9.0		9.0		0.0		0.0		63.0
Subtotal (Cost):	\$0		\$3,371		\$2,337		\$1,443		\$1,084		\$1,204		\$0		\$0		\$9,139
3. Project Design Workshops 2x each month in person, 3-hours each -- assume 18																	0.0
a. Schedule & Sequencing Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						0.0
b. Value Engineering Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						63.0
c. Risk & Opportunity Assessment Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						63.0
Subtotal (Hours):	0.0		54.0		54.0		27.0		27.0		27.0		0.0		0.0		189.0
Subtotal (Cost):	\$0		\$10,114		\$7,010		\$3,429		\$3,251		\$3,612		\$0		\$0		\$27,416
4. Design Review & Procurement Plan/Packages: 60% & 90% - assume 80 hours																	0.0
-60%			20.0		20.0		10.0		10.0		8.0						60.0
-90%			20.0		20.0		10.0		10.0		8.0						60.0
Subtotal (Hours):	0.0		40.0		40.0		20.0		20.0		16.0		0.0		0.0		120.0
Subtotal (Cost):	\$0		\$7,492		\$5,193		\$2,540		\$2,408		\$2,141		\$1,138		\$978		\$21,895
5. In-house project estimating and other design phase services - assume 120 hours																	0.0
a. 60% Project Budget & Construction Cost Development:			8.0		8.0		8.0		8.0		8.0						0.0
b. 90% GMP Project Budget & Construction Cost Development:			8.0		8.0		8.0		8.0		8.0						0.0
Subtotal (Hours):	0.0		16.0		16.0		16.0		16.0		17.6		0.0		0.0		240.0
Subtotal (Cost):	\$0		\$2,937		\$2,077		\$2,092		\$1,926		\$2,346		\$0		\$0		\$52,578
6. Other costs if the CMAR considers inclusive of design phase services; e.g., reproductions, travel time, that it should be compensated.																	0.0
- General Management, Administrative Services:			80.0		180.0		80.0		60.0		20.0						0.0
- Condition Assessment for DAF Building Upgrades - assume 40 hrs:			4.0		12.0		8.0		8.0		8.0						0.0
Subtotal (Hours):			84.0		192.0		88.0		68.0		28.0						0.0
Subtotal (Cost):			\$0		\$0		\$0		\$0		\$0						\$0

**DESIGN PHASE SERVICES PROPOSED RATES CONTINUED**

MWH Constructors  
 Town of Johnstown, Water Treatment Plant Expansion Project  
 CMAR Design Phase (Preconstruction) Services - Cost Proposal  
 Date: Dec. 1, 2022

**Design Phase, Preconstruction Services Cost Proposal Summary**

Description	Project Executive Tom Paul	Preconstruction Manager Tom Paul	Project Manager Nancy Borom	Project Supervisor Tyler Hendrix	Electrical Supervisor Victor Ebara	Local Estimator Brett Henderson	Quality Engineer TBD	Safety Engineer TBD	Total
	0.0	84.0	192.0	88.0	68.0	23.0	8.0	8.0	476.0
	\$0	\$15,733	\$24,925	\$11,176	\$8,188	\$3,746	\$759	\$652	\$65,178
<b>Subtotal (Hours):</b>									
<b>Subtotal (Cost):</b>									
7. Preliminary GMP									
Early Work / Long Lead Procurement		8.0	60.0	40.0	16.0	24.0	8.0	8.0	0.0
GMP Work Package Plan Development, Work Package Solicitation, Preparation of GMP		40.0	120.0	120.0	40.0	32.0	10.0	10.0	0.0
	0.0	48.0	180.0	160.0	56.0	56.0	18.0	18.0	372.0
	\$0	\$8,990	\$23,367	\$20,320	\$6,743	\$7,492	\$1,708	\$1,467	\$36,086
<b>Totals (Hours):</b>									
<b>Total Hourly Billable Rate:</b>									
	\$187	\$187	\$130	\$127	\$120	\$134	\$95	\$81	\$164.0
<b>Total Preconstruction Staff Labor:</b>	\$0	\$49,446	\$65,427	\$41,148	\$24,081	\$42,276	\$3,605	\$5,096	\$229,080

## **GMP APPROACH**

- 1. Itemized unit labor cost for personnel on the CMAR's staff expected to be involved in the project; i.e., cost per hour by job title or labor classification. Itemize for each labor category the unit payroll cost and the direct labor overhead cost applicable to each labor hour charged.**

### **DESIGN PHASE / PRECONSTRUCTION SERVICES: PROPOSED HOURLY STAFF RATES:**

Project Executive – \$185.00/HR  
Project Manager – \$130.00/HR  
Assistant Project Manager – \$115.00/HR  
General Superintendent – \$125.00/HR  
Superintendent – \$115.00/HR  
Lead Estimator – \$134.00/HR  
Estimator – \$110.00/HR  
Project Engineer – \$110.00/HR  
Office/Field Engineer – \$100.00/HR  
SU&C Manager – \$145.00/HR  
Scheduler – \$110.00/HR  
Quality Manager – \$105.00/HR  
Safety Manager – \$105.00/HR

- 2. Provide the factor, percentage or lump sum, or other manner of pricing of the CMAR's general overhead required to be compensated during the construction phase.**

MWH proposes a fixed percentage of **3.5%** on top of Cost of Work, excluding bonds and insurance.

- 3. Provide a detailed description and manner of determination of the CMAR's fee and/or profit factor desired to be attained and priced in the GMP.**

MWH proposes a fixed percentage of **3.0%** on top of Cost of Work, excluding bonds and insurance.

- 4. Describe your approach to developing a cost to complete this project. How will this affect your firm's design input?**

MWH will work openly and in partnership with the Town and Engineer to perform cost estimation services and ultimately to produce a Guaranteed Maximum Proposal(s) for the construction of this project. We believe that all CMAR projects require a baseline construction cost estimate to facilitate thorough and objective decision-making during the course of design for the project to achieve the goal of producing an on-schedule and under budget project. Having a baseline estimate in place for the project will allow for itemized cost-based decision making

### **CONSTRUCTION PHASE (PRELIMINARY GMP): PROPOSED HOURLY STAFF RATES:**

Project Executive – \$220.00/HR  
Project Manager – \$151.00/HR  
Assistant Project Manager – \$135.00/HR  
General Superintendent – \$140.00/HR  
Superintendent – \$130.00/HR  
Lead Estimator – \$156.00/HR  
Estimator – \$120.00/HR  
Project Engineer – \$130.00/HR  
Office/Field Engineer – \$115.00/HR  
SU&C Manager – \$160.00/HR  
Scheduler – \$120.00/HR  
Quality Manager – \$115.00/HR  
Safety Manager – \$115.00/HR  
BIM / VDC Manager – \$120.00/

to be performed. There are several key decisions made early in the project which have compounding implications to final project design once decided upon and cemented into the project's design. As an example, our team will provide input early on with regards to proposed facilities layouts and sizing, routing of utilities, process and key equipment selection, and selection of building materials. As the project evolves from 60% to 90% design, we will support decision-making by providing input and cost estimation services for design alternatives and value engineering ideas.

Once design progresses to the 60% design, MWH will provide further cost estimation services as desired by the Town. The 60% design estimate produced by MWH will be substantiated by detailed quantity take-offs, market-based input for costs of materials and equipment, detailed risk assessment and contingency assessment by means of a risk register, and cost escalation analysis. At the time of the 60% estimate, MWH will prepare several reports to breakdown the estimated cost of construction including estimate reports by facility/building, discipline of work per CSI specification grouping, work phasing, and bid packaging. Following completion and submission of the 60% design OPCC estimate, MWH will prepare a cost summary presentation for the Town and Engineer. In tandem with the 60% estimate, our team will prepare a detailed construction schedule outlining the remaining timelines for design

development, bid packaging and bid processes, GMP development, and construction, including facility start up and commissioning. The project construction schedule will be used to develop and support the estimated durations needed for CMAR project management General Conditions staff.

As the project progresses from 60% design to 90% design, we will prepare a site logistics plan, confirm long lead items, and prepare safety, quality management plans. We recognize that this phase of the project is critical for the identification and avoidance of potential conflicts. MWH understands that preconstruction will be very intense for the first several months, which is why our team is available to begin immediately. We also see as critical during preconstruction the procuring of other early works packages and following the 60% estimate can progress directly into GMP development.

Our team will provide design review between 60%, 90% and final design stages with dedicated focus towards constructability reviews and including review of plans, standard details, and specifications. At the 90% design stage, MWH will produce a final estimate and report. Similar to the 60% stage, the 90% will be supported by detailed take-offs, subcontractor and supplier provided budgetary pricing, detailed risk register, escalation analysis, and General Conditions pricing. Should the Town desire to fast-track the project schedule, MWH can prepare and issue out competitive bid packages for subcontractor and supplier pricing to be incorporated into a 90% design GMP proposal. MWH will advertise and solicit bids for all bid packages identified for the project as competitively bid and/or best-value selection-based scopes of work. Upon receipt of bids, MWH will perform a comparison and analysis of the bids received and will make a recommendation of award for each bid package to the Town for approval. The final selected bid pricing will be incorporated alongside the self-performed scopes of work and General Conditions pricing prepared by MWH into a final GMP proposal for the balance of work. Any scopes of work that are deemed appropriate to defer for bidding due to extended time to complete (e.g., site paving and landscaping, painting and coatings, commissioning and startup) will be allocated into a project allowance and will be bid out at a later date closer to the time of need for construction. The GMP proposal prepared by MWH will include the Direct Cost of Work including subcontracted work, supply of equipment and materials, and self-performed construction by MWH. Additionally, the cost of

CMAR General Conditions will be included. MWH will prepare a final project risk register which will itemize and allocate out responsible entities (either CMAR or the Town) for ownership of project risks and will associate estimated costs and probabilities to each risk to build up and determine necessary amounts to be included in the GMP proposal for CMAR Contingency, Owner Allowances, and Owner's Contingency.

**5. Describe contingency, how it is managed, and use of contingency.**

Contingency is the funds to mitigate project risks. During the preconstruction phase and through construction, we will update the project Risk Register. This register captures all risks, mitigation strategies, their costs and also the costs of accepting the risk without mitigation. As a project team we will review the Risk Register and determine which risks are most valid. From this proofing exercise we will be able to determine a budget for contingency. Contingency typically amounts to 3% to 7% of the Cost of Work. We typically see contract terms which allow for contingency to be utilized without permission up to a pre-determined value. Once that threshold is reached then the Town would need to approve contingency utilization. Typical uses for contingency are scope gap, schedule acceleration, rework, trade flow.

**6. Describe your approach to developing value engineering ideas through construction delivery to enhance the work product while potentially saving cost.**

**We define Value as equaling Functionality divided by Cost.** This allows us to increase the value of a change by providing better functionality, reducing cost, or both. Making a structure smaller or removing scope does not increase value, as these changes reduce function. **Without this relationship, VE is often used as a scope reduction tool that alters design intent instead of identifying overall improvements that can provide cost savings or value.**

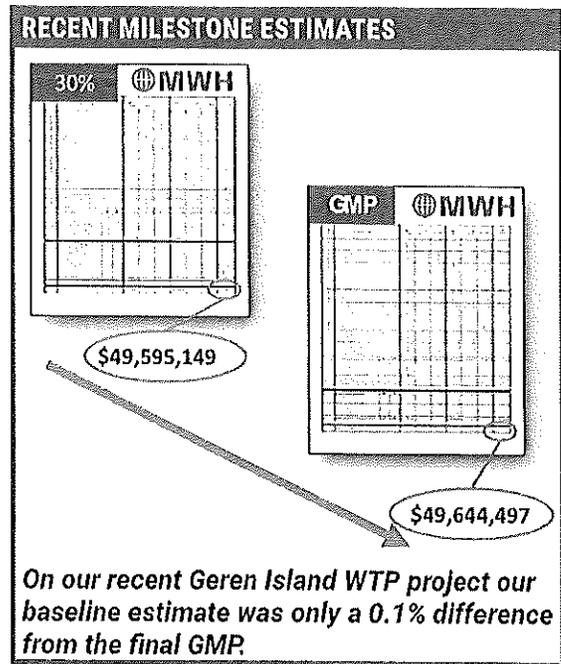
Therefore, our team explores all options within the guidelines and considers initial cost, life-cycle cost, operational flexibility, performance, reliability, constructibility, and future expansion considerations. MWH has a proven value engineering process that transparently tracks design alternatives and detailed cost estimates to allow the Town to make informed decisions.

**DEVELOPING ACCURATE ESTIMATES**

MWH's ability to self-perform, our experience with Colorado subcontractors and suppliers, and our focus on W/WW projects, allows us to accurately prepare detailed estimates for the Town to make informed decisions. We develop full project cost estimates corresponding to each design milestone. However, our team does not wait until each design phase is completed to estimate portions of the project - we maintain constant communication with the design team to update costs in the baseline model to reflect market pricing. MWH uses a Cost Trend Log (CTL) to quantify the scope and cost changes occurring between design deliverables. This is an integral part of developing early cost certainty and provides the baseline for Value Engineering (VE) efforts. Our comparison of the initial estimates to the low bidders for subcontracted work is typically within 4.9%.

**VALUE ANALYSIS**

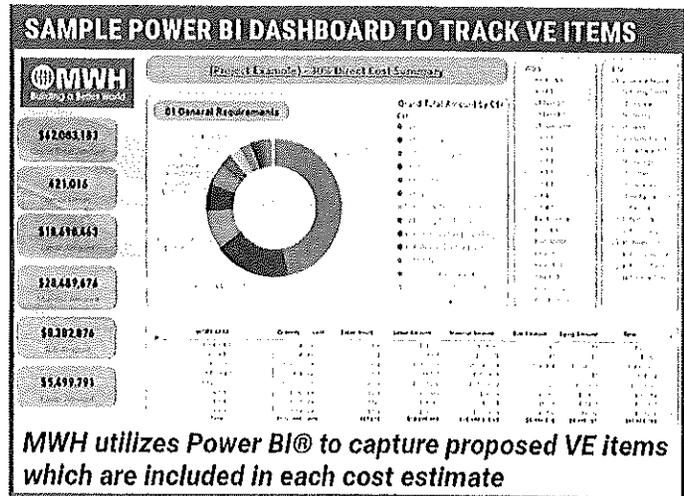
MWH's goal as your CMAR is to deliver your project successfully while identifying opportunities to provide additional value through cost reduction or improvements to the facilities functionality and lifespan. A successful VE analysis identifies opportunities to provide the Town with best value improvements to the Johnstown WTP Expansion project – this is not simply a reduction in cost. Therefore, our team explores all options within the guidelines and considers initial cost, life-cycle cost, operational flexibility, performance, reliability, constructability, and future expansion considerations. MWH has a proven value engineering process that transparently tracks design alternatives and detailed cost estimates to allow the Town to make informed decisions.



**EXPERIENCE TRACKING IDENTIFIED SAVINGS FROM VE/CONSTRUCTABILITY TO IMPLEMENTATION**

MWH utilizes a variety of tools to track proposed VE and constructability ideas and alternatives through design and GMP development and then into full implementation. Our cost estimates are built to include all potential alternatives for consideration along with the impacts to schedule, cost, and risk elements of the project. MWH utilizes HCSS® for our cost estimates along with a variety of take-off tools to capture an accurate cost estimate.

Proposed VE items are fully priced and included in each cost estimate. We utilize Microsoft Power BI® to capture this data in dashboards for internal and client use and can track cost breakdowns in an interactive dashboard across work packages, structures, design progression, or by VE items. An example of this dashboard is shown to the right. As VE items are either accepted, rejected, or further considered we continue that progression into the next cost model as design progresses further.



Eventually all VE items are either accepted and implemented into the GMP, or they are rejected from consideration. After final GMP acceptance, costs are tracked by Work Breakdown Structure. So, if we align a particular VE item to a WBS category we can always reconcile that cost element. But any and all savings or value would already be implemented and credited to the project as that VE item is accepted and implemented into the project cost model, and eventually the GMP finalized and accepted. We can easily track implemented VE credits within this cost model and GMP process for the Town's evaluation.

**7. Provide an itemization, if any, of CMAR's overhead, fee, and/or profit to be applied to both materials and subcontractor costs incorporated into the project.**

Lets start with what is the GMP comprised of and how overhead, fee and/or profit are applied. All of the subcontractor bids and MHW self perform work values will be compiled into what is typically called the Cost of Work or COW. The COW doesn't differentiate between labor, materials, and construction equipment. With a value for the Cost of Work established then the overhead and profit percentages are added. This value is then multiplied by the insurance rate as well as the rate for payment and performance bonds. This new value is then added to the Contingency value which is the Guaranteed Maximum Price. MWH is responsible for assuring that the project is built for that value or less. Any unspent GMP is returned to the Town.

**8. Provide an itemization of the CMAR's proposed equipment and temporary facilities to be used and/or installed at the project site together with applicable unit pricing proposed for compensation throughout the project. Include a description and example of the way a "small tool allowance" and expendable tools and parts will be compensated.**

- ▶ Staff vehicles (owned ½-ton trucks) – \$1,400/month
- ▶ Cell phones (owned devices + data plan) – \$100/month
- ▶ Computers & Peripherals (owned devices + software) – \$75/month
- ▶ Office Trailer (Double Wide 24' x 60') – \$2,800/month (to be quoted)
- ▶ Connex Containers – \$200 each/month x 4 each
- ▶ Chemical Toilets – \$120 each/month x 4 each (to be quoted)
- ▶ Recycle & Trash Roll-off Dumpsters – \$400 each/month (to be quoted)
- ▶ Internet Service – \$200/month (to be quoted)
- ▶ Temporary Power Utilities – \$TBD (to be quoted)
- ▶ Office Supplies – \$300/month
- ▶ Printing & Reproduction – \$250/month
- ▶ Jobsite Printer/Copier/Scanner – \$500 each/

month x2 each (to be quoted)

- ▶ Postage – \$100/month
- ▶ Coffee, Water, Ice – \$300/month
- ▶ First Aid Kit Replenishment – \$500/month
- ▶ Fire Extinguisher Inspection / Refill – \$100/month

**9. Describe the approach, general facilities, and basis of compensation for construction and maintenance of a temporary power system during construction.**

During the preconstruction phase we will layout a temporary power system for construction trailers, construction power. With the scope determined we have two options. The first is to negotiate this scope with an electrical contractor, or bid this work out. It has been our experience that it is easiest to include this scope with the electrical bid package, so that the installation, maintenance, and demobilization is taken care of by the electrical contractor in site

**10. Describe any additional cost elements or factors applied to project labor, materials, equipment or subcontractor's costs to determine the GMP.**

MWH does not have any additional cost to be applied to project labor, materials, equipment, or subcontractor's cost to determine the GMP.

**11. Itemize and describe the rates and/or other cost factors in providing comprehensive general liability, auto liability, and builders risk insurance during the construction period.**

- ▶ General Commercial Liability – 0.22%
- ▶ Automobile – Included
- ▶ Professional Liability – 0.22%
- ▶ Pollution Insurance – 0.22%
- ▶ Builder's Risk – 0.60%
- ▶ Total for Insurances – 1.26%

**12. Describe and itemize the rate applicable to this project which will be utilized to determine the payment and performance bond premiums for the project.**

List out standard P&P rate based on standard warranty period – generally 0.615% of project cost before bonds for 24 month or less contract duration.

For the Johnstown WTP project our surety provided a rate of 0.77%.

**13. Itemize those factors involved in change orders, contract modifications order and/or adjustments to the GMP including supervision allowance (i.e., percentage of direct labor hours, cost or other approach), labor and material markups and overhead and profit percentages if they are different than the factors used in determining the initial GMP.**

We will follow the same format as the initial GMP development. Potential credit for general conditions or insurance premium would have to be supported by a significant reduction in project scope and duration. Fee and bond are only billed as cost, therefore reduction in scope pertaining to fee and bonds would be a credit at project closeout. MWH will follow mutually agreeable percentage markups for additional material, labor and equipment.

# Exhibit B - WA1 - Executive Summary x WBS



## Project Specific Information

Job Name :	Johnstown Water Treatment Plant Expansion	Bid Review Date	9/20/2023
Job Type :	Water Treatment Plant Upgrades	Anticipated Award Date	TBD
Owner :	Town of Johnstown, CO	Construction Start	10/1/2023
Location :	Johnstown, CO	Construction Completion	6/15/2026
Contract Type :	CMAR	Warranty Period	1 year(s)
Bond Required?	YES	Estimating Phase	60% Design

## SP Labor and Subcontract/ POA Risk Items

### Direct Cost Summary by WBS

Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA1 S-01 Yard Pipe	6,146	26.81%	\$50.65	\$311,272	\$1,489,089	\$310,966	\$265,578	\$2,376,905	33.28%
WA1 S-02 Aggregate Piers	-	0.00%	\$0	\$0	\$0	\$4,248	\$200,600	\$204,848	2.87%
WA1 S-03 Excavation / Dewatering	1,510	6.59%	\$46.71	\$70,539	\$12,626	\$307,131	\$735,626	\$1,125,922	15.77%
WA1 S-04 Wet Well Concrete	4,296	18.74%	\$46.11	\$198,108	\$329,448	\$73,006	\$159,101	\$759,663	10.64%
WA1 S-05 Site Civil / Temporary Roads	10,973	47.87%	\$50.52	\$554,397	\$440,036	\$714,252	\$965,494	\$2,674,179	37.45%
<b>Total Direct by WBS</b>	<b>22,925</b>	<b>100.00%</b>	<b>\$49.48</b>	<b>\$1,134,316</b>	<b>\$2,271,198</b>	<b>\$1,409,604</b>	<b>\$2,326,400</b>	<b>\$7,141,517</b>	<b>100.00%</b>
<b>% of Direct Cost</b>				<b>15.88%</b>	<b>31.80%</b>	<b>19.74%</b>	<b>32.58%</b>	<b>100.00%</b>	

### General Conditions

Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost
99-GCGR Bidding GCs	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	1%
9999-GCGR Construction GCs	-	8,520	\$113.77	\$969,335	\$184,185	\$168,639	\$0	\$1,322,159	19%
<b>Total General Conditions</b>	<b>-</b>	<b>9,100</b>	<b>\$249.77</b>	<b>\$1,048,215</b>	<b>\$184,812</b>	<b>\$170,776</b>	<b>\$0</b>	<b>\$1,403,802</b>	<b>16%</b>
<b>TOTAL COST OF WORK</b>	<b>22,925</b>	<b>9,100</b>		<b>\$2,182,530</b>	<b>\$2,456,010</b>	<b>\$1,580,380</b>	<b>\$2,326,400</b>	<b>\$8,545,320</b>	

### Mark-Up Costs

T & I/ Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost
Liability Insurance	0.660%	%	\$63,544	Project total	Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0
Builders Risk Insurance	0.266%	%	\$205,302		Contractor Contingency (on Cost of Work)	5.00%	%	\$427,266
					Escalation	0.00%	%	\$0
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$264,907
Project Bond	0.770%	%	\$74,134		Profit (on Cost of Work incl. Contingency)	3.00%		\$227,063
<b>Total Mark-Up Cost</b>			<b>\$342,980</b>		<b>Total Fee and Cont. Cost</b>			<b>\$919,237</b>

## Total Project Cost

## Key Ratios

	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
<b>Total Project Cost</b>	<b>\$2,182,530</b>	<b>\$2,456,010</b>	<b>\$1,580,380</b>	<b>\$2,326,400</b>	<b>\$1,262,217</b>	<b>\$9,807,537</b>	Craft to Supervision	2.52	32,025
							Fee as % of Project	5.02%	
							Contingency as % of Project	4.4%	

October 5, 2023

Ellen Hilbig, P.E.  
Utilities Director, Town of Johnstown  
450 S. Parish Ave  
Johnstown, Colorado 80534

**Subject: Johnstown WTP Work Authorization 1 - Early Work Activities**

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 1, Early Construction Activities proposal addressing the procurement of early construction activities in the amount of \$9,807,537.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

**Early Work Activities Packages will include the following:**

- S-01 – Relocation, demolition, and installation of yard piping including tie-ins during plant shut down window.
- S-02 – Ground Improvements (Aggregate Piers)
- S-03 – Excavation and Dewatering
- S-04 – Structural Concrete (Clarified Water Wet Well)
- S-05 – Site Civil, Clear/Grub, Temp Roadways

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements and subcontracts that will be included in our Construction Contract. Also included is the management and supervision of the Early Work Activities Packages.

General condition items include, but are not limited to the following:

- Permits
- Site Survey
- Storm Water Management Implementation and Maintenance

**The proposal is based on the following:**

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

Activity ID	Activity Name	Orig Dur	Rem Dur	ACD	Start	Finish	Total Float	Work Package	2023												2024												2025												2026												2027											
									F	M	A	M	J	J	A	S	O	N	D	F	M	A	M	J	J	A	S	O	N	D	F	M	A	M	J	J	A	S	O	N	D	F	M	A	M	J	J	A	S	O	N	D	F	M	A	M	J	J	A	S	O	N	D					
<b>Johnstown WTP Expansion Project</b>																																																																				
<b>Contract Milestones (L1)</b>																																																																				
MSL1000015	NTP Early Construction Package and S&P Packages (LLE, Underground Utility Relcations)	0	0	0	30-Oct-23		-33	WA1	<ul style="list-style-type: none"> <li>◆ NTP Early Construction Package and S&amp;P Packages (LLE, Underground Utility Relcations)</li> </ul>																																																											
MSL1000055	Early Work Package Closeout	20	20	20	04-Oct-24	31-Oct-24	547	WA1	<ul style="list-style-type: none"> <li>■ Early Work Package Closeout</li> </ul>																																																											
MSL1000065	Early Work Package Substantial Completion	0	0	0		31-Oct-24	547	WA1	<ul style="list-style-type: none"> <li>◆ Early Work Package Substantial Completion</li> </ul>																																																											
<b>Design</b>																																																																				
<b>Early Work Package Separation</b>																																																																				
A1440	Storm Water Design - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> <li>■ Storm Water Design - EWP</li> </ul>																																																											
A1460	Yard Piping & JUB Coordination - EWP	15	15	15	08-Sep-23	28-Sep-23	-104	WA1	<ul style="list-style-type: none"> <li>■ Yard Piping &amp; JUB Coordination - EWP</li> </ul>																																																											
A1470	Site Grading & Access Roads - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> <li>■ Site Grading &amp; Access Roads - EWP</li> </ul>																																																											
A1430	Finalize Early Work Package Drawing Set - EWP	10	10	10	29-Sep-23	12-Oct-23	-104	WA1	<ul style="list-style-type: none"> <li>■ Finalize Early Work Package Drawing Set - EWP</li> </ul>																																																											
A1480	Town Review - EWP	10	10	10	13-Oct-23	26-Oct-23	-34	WA1	<ul style="list-style-type: none"> <li>■ Town Review - EWP</li> </ul>																																																											
A1490	Review Meeting - EWP	1	1	1	27-Oct-23	27-Oct-23	-34	WA1	<ul style="list-style-type: none"> <li>■ Review Meeting - EWP</li> </ul>																																																											
<b>Preconstruction</b>																																																																				
<b>S-Packages</b>																																																																				
A5390	S-Package - Work Authorization 1 Development	0	0	0	13-Oct-23		-70	WA1	<ul style="list-style-type: none"> <li>◆ S-Package - Work Authorization 1 Development</li> </ul>																																																											
A5400	S-Package - Develop Bid Packages	10	10	10	13-Oct-23	26-Oct-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Develop Bid Packages</li> </ul>																																																											
A5410	S-Package - Submit Bid Packages to Town	0	0	0		26-Oct-23	-70	WA1	<ul style="list-style-type: none"> <li>◆ S-Package - Submit Bid Packages to Town</li> </ul>																																																											
A5420	S-Package - Town Reviews Bid Packages	10	10	10	27-Oct-23	09-Nov-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Town Reviews Bid Packages</li> </ul>																																																											
A5430	S-Package - Prepare and Advertise Bids	10	10	10	30-Oct-23	10-Nov-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Prepare and Advertise Bids</li> </ul>																																																											
A5440	S-Package - Manage Through Bid Process	10	10	10	13-Nov-23	28-Nov-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Manage Through Bid Process</li> </ul>																																																											
A5450	S-Package - Receive and Review Bids	1	1	1	29-Nov-23	29-Nov-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Receive and Review Bids</li> </ul>																																																											
A5460	S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission	10	10	10	30-Nov-23	13-Dec-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission</li> </ul>																																																											
A5470	S-Package - Town Selection of Bidders	5	5	5	14-Dec-23	20-Dec-23	-70	WA1	<ul style="list-style-type: none"> <li>■ S-Package - Town Selection of Bidders</li> </ul>																																																											
<b>S-01 Relocation, Demolition, and Installation of Yard Pipe</b>																																																																				
A4950	Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install	15	15	15	21-Dec-23	16-Jan-24	-24	WA1	<ul style="list-style-type: none"> <li>■ Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install</li> </ul>																																																											
<b>S-02 Ground Improvements (Aggregate Peirs)</b>																																																																				
A5030	Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr	15	15	15	21-Dec-23	16-Jan-24	770	WA1	<ul style="list-style-type: none"> <li>■ Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr)</li> </ul>																																																											
<b>S-03 Excavation &amp; Dewatering</b>																																																																				
A5110	Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation & Dewatering	15	15	15	01-Dec-23	21-Dec-23	-70	WA1	<ul style="list-style-type: none"> <li>■ Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation &amp; Dewatering</li> </ul>																																																											
<b>S-04 Structural Concrete (Clarified Water Wet Well Only)</b>																																																																				
A5190	Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete	15	15	15	21-Dec-23	16-Jan-24	-21	WA1	<ul style="list-style-type: none"> <li>■ Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete</li> </ul>																																																											
<b>S-05 Site Civil, Clear &amp; Grub, Temp Roadways</b>																																																																				
A5270	Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear & Grub, Temp	15	15	15	21-Dec-23	16-Jan-24	63	WA1	<ul style="list-style-type: none"> <li>■ Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear &amp; Grub, Temp</li> </ul>																																																											
<b>Permitting</b>																																																																				
A3620	Early Works Construction Permits	10	10	10	13-Oct-23	26-Oct-23	822	WA1	<ul style="list-style-type: none"> <li>■ Early Works Construction Permits</li> </ul>																																																											
A3640	Potable Water Pipe Asbestos - Permit CDPHE	10	10	10	13-Oct-23	26-Oct-23	311	WA1	<ul style="list-style-type: none"> <li>■ Potable Water Pipe Asbestos - Permit CDPHE</li> </ul>																																																											
<b>Procurement</b>																																																																				
<b>Submittals/Deliveries</b>																																																																				
<b>CSI Current Format</b>																																																																				
<b>Division 03 - Concrete</b>																																																																				
A1190	Submit/Approve/Deliver Concrete Mix Designs (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> <li>■ Submit/Approve/Deliver Concrete Mix Designs (20/25/)</li> </ul>																																																											
A1200	Submit/Approve/Deliver Reinforcements (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> <li>■ Submit/Approve/Deliver Reinforcements (20/25/)</li> </ul>																																																											
<b>Division 31 - Earthwork</b>																																																																				
A1170	Submit/Approve/Deliver Dewatering (20/25/10)	55	55	55	22-Dec-23	14-Mar-24	-37	WA1	<ul style="list-style-type: none"> <li>■ Submit/Approve/Deliver Dewatering (20/25/10)</li> </ul>																																																											
<b>Construction</b>																																																																				
<b>Work Authorization 1</b>																																																																				
A3940	Shutdown Window - October 15th to April 15th	140	140	140	30-Oct-23	17-Mar-24	-47	WA1	<ul style="list-style-type: none"> <li>■ Shutdown Window - October 15th to April 15th</li> </ul>																																																											
A3930	Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN)	20	20	20	21-Dec-23	23-Jan-24	-24	WA1	<ul style="list-style-type: none"> <li>■ Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN)</li> </ul>																																																											
A6520	Clear and Grub Site	5	5	5	22-Dec-23	02-Jan-24	-70	WA1	<ul style="list-style-type: none"> <li>■ Clear and Grub Site</li> </ul>																																																											

Remaining Level of Effort	Critical Remaining Work
Actual Level of Effort	Last Update Milestone
Actual Work	Milestone
Remaining Work	





**EXHIBIT B: WORK AUTHORIZATION 1**

**EXHIBIT C: WORK AUTHORIZATION 2**

- Procurement of long lead items and work that must be completed in the early plant shut down window, that are critical for the expedient delivery of the project.
- Subcontracts for early work activities including earthwork, yard pipe and yard pipe tie ins required during plant shutdown windows, aggregate piers, and concrete at the Clarified Water Wet Well.
- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.
- Payments in Work Authorization 1 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
  - *10% Purchase Price for Submittals and Engineering*
  - *40% Purchase Price for Raw Materials*
  - *40% Purchase Price for Materials Stored or Delivered to Site*
  - *5% Purchase Price for Startup and Testing*
  - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Builders Risk policy is being carried for the entire project in Work Authorization 1. This premium is based on a final GMP contract value of \$77,000,000. This policy premium will be adjusted based on the final GMP amount.

Attached in Exhibit B is the schedule for the Early Work Activities. The early work activities has a substantial completion date of October 31, 2024.

Sincerely,

*Matthew M. Wojtkiewicz 10/5/2023*

Matthew M. Wojtkiewicz  
Project Executive  
MWH Constructors

# Exhibit C - WA2 - Executive Summary x Bid Package



## Project Specific Information

Job Name :	Johnstown Water Treatment Plant Expansion	Bid Review Date	9/20/2023
Job Type :	Water Treatment Plant Upgrades	Anticipated Award Date	TBD
Owner :	Town of Johnstown, CO	Construction Start	10/1/2023
Location :	Johnstown, CO	Construction Completion	6/15/2026
Contract Type :	CMAR	Warranty Period	1 year(s)
Bond Required?	YES	Estimating Phase	60% Design

## SP Labor and Subcontract/ POA Risk Items

### Direct Cost Summary by WBS

Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA2 P-01 Emergency Generators	-	0.00%	\$0	\$0	\$0	\$0	\$1,757,500	\$1,757,500	8.88%
WA2 P-02 MCC, Harmonic Filters	-	0.00%	\$0	\$0	\$0	\$0	\$5,122,201	\$5,122,201	25.88%
WA2 P-03 Vertical Turbine Pumps & VFDs	-	0.00%	\$0	\$0	\$2,347,847	\$0	\$227,500	\$2,575,347	13.01%
WA2 P-04 GAC Vessels & Media	-	0.00%	\$0	\$0	\$4,240,000	\$0	\$0	\$4,240,000	21.42%
WA2 P-05 Membrane Filters	-	0.00%	\$0	\$0	\$4,554,434	\$0	\$0	\$4,554,434	23.01%
WA2 P-06 PEMB (Treatment Building Only)	-	0.00%	\$0	\$0	\$0	\$0	\$1,492,632	\$1,492,632	7.54%
WA2 P-07 Electrical Preconstruction Services	-	0.00%	\$0	\$0	\$0	\$0	\$52,000	\$52,000	0.26%
<b>Total Direct by WBS</b>	-	0.00%	\$0.00	\$0	\$11,142,281	\$0	\$8,651,833	<b>\$19,794,114</b>	100.00%
<b>% of Direct Cost</b>				0.00%	56.29%	0.00%	43.71%	100.00%	

### General Conditions

Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost
99-GCGR GC's and GR's	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
<b>Total General Conditions</b>	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
<b>TOTAL COST OF WORK</b>	-	580		<b>\$78,880</b>	<b>\$11,142,907</b>	<b>\$2,137</b>	<b>\$8,651,833</b>	<b>\$19,875,757</b>	

### Mark-Up Costs

T & I/ Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost
Liability Insurance	0.660%	%	\$148,785		Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0
					Contractor Contingency (on Cost of Work incl. GCGR)	5.00%	%	\$993,788
					Escalation	0.00%	%	\$0
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$727,577
					Profit (on Cost of Work incl. Contingency)	3.00%		\$623,637
Project Bond	0.770%	%	\$173,582					
<b>Total Mark-Up Cost</b>			<b>\$322,367</b>		<b>Total Fee and Cont. Cost</b>			<b>\$2,345,001</b>

## Total Project Cost

## Key Ratios

	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
<b>Total Project Cost</b>	<b>\$78,880</b>	<b>\$11,142,907</b>	<b>\$2,137</b>	<b>\$8,651,833</b>	<b>\$2,667,368</b>	<b>\$22,543,126</b>	Craft to Supervision	-	580
							Fee as % of Project	5.99%	
							Contingency as % of Project	4.4%	

October 5, 2023

Ellen Hilbig, P.E.  
Utilities Director, Town of Johnstown  
450 S. Parish Ave  
Johnstown, Colorado 80534

**Subject: Johnstown WTP Work Authorization 2 - Early Equipment Procurement**

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 2, Early Equipment Procurement proposal addressing procurement of long lead materials in the amount of \$22,543,126.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

**Procurement Packages will include the following:**

- P-01 – Emergency Generators
- P-02 – Motor Control Centers and Harmonic Filters
- P-03 – Vertical Turbine Pumps and VFD's
- P-04 – GAC Vessels and Media
- P-05 – Membrane Filter System
- P-06 – Pre-Engineered Metal Building (Treatment Building Only)
- P-07 – Electrical Preconstruction Services

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements that will be included in our Construction Contract. Also included is the management and supervision of the Procurement Packages.

All bid packages will be reviewed with the Town of Johnstown and Burns and McDonnell prior to any award.

**The proposal is based on the following:**

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

- Procurement of long lead items that are critical for the expedient delivery of the project. The estimated equipment manufacturing and delivery lead-times we have been given following approved submittals are (subject to change)
  - *P-01 – Emergency Generators: 52 Weeks*
  - *P-02 – Motor Control Centers and Harmonic Filters: 65 Weeks*
  - *P-03 – Vertical Turbine Pumps and VFD's: 48 Weeks*
  - *P-04 – GAC Vessels and Media: 36 Weeks*
  - *P-05 – Assignment of Membrane Supply: 30 Weeks*
  
- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.
  
- Payments in Work Authorization 2 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
  - *10% Purchase Price for Submittals and Engineering*
  - *40% Purchase Price for Raw Materials*
  - *40% Purchase Price for Materials Stored or Delivered to Site*
  - *5% Purchase Price for Startup and Testing*
  - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Sincerely,

*Matthew M. Wojtkiewicz 10/5/2023*

Matthew M. Wojtkiewicz  
Project Executive  
MWH Constructors

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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**STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION MANAGER AT RISK CONTRACT**

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

- A. Wherever used in the Proposal Documents or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. 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 prior to the receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.
  2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Engineer, and designates the specific items that are Contract Documents.
  3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.
  5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  6. Claim
    - a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Engineer, regarding a Change Proposal.
  - c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.
  8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.
  9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.
  10. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.
  12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.
  13. Construction Support Costs—See Agreement, Article 5.
  14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.
  15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.
17. Contract Price—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR's compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner's Contingency Allowance.
18. Contract Times—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.
19. Contractor—The term "Contractor," if used in the Contract, means Construction Manager at Risk.
20. Cost of the Work—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.
21. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.
22. Effective Date of the Contract—The date indicated in the Agreement, on which the Contract becomes effective.
23. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
24. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
25. Engineer—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.
26. Estimated Cost of the Work—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. Estimated Guaranteed Maximum Price—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner’s Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner’s Advisor.
28. Field Order—A written order issued by Owner’s Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.
29. Final Completion—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.
30. Guaranteed Maximum Price (GMP)—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.
31. 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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
32. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
33. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
34. Milestone—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
35. Notice of Award—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.
36. Owner—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.
38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.
39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Engineer, collectively.
40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.
41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.
42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.
43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.
44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.
45. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.
46. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
47. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

48. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
49. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Construction Manager at Risk.
50. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
51. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.
52. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner’s Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner’s Advisor. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner’s Advisor or Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
53. Substantial Completion—The time at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, 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 Work refer to Substantial Completion of such Work.
54. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
55. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

56. Technical Data
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures, except Underground Facilities, or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Construction Manager at Risk.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated in the Drawings.
57. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
58. Unit Price Work—Work to be paid for based on unit prices.
59. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
60. Work Authorization—A document issued by Owner’s Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.
61. Work Package—A specific portion of the Work developed by Engineer and Owner’s Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.
62. Work Change Directive—A written directive issued by Owner’s Advisor to Construction Manager at Risk on or after the Effective Date of a governing Work Authorization, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Proposal Documents or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives—The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Owner’s Advisor or Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner’s Advisor or Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective is not intended to and will not be effective to assign to Owner’s Advisor or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day—The word “day” means a period of 24 hours measured from midnight to the next midnight.
- D. Defective—The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Owner’s Advisor’s recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.
- E. Furnish, Install, Perform, Provide
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for their intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for their intended use.
  - 4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CMAR shall furnish and install said services, materials, or equipment complete and ready for their intended use.

- F. Contract Price or Contract Times—References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. 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 such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance**

- A. Performance and Payment Bonds—When CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.
- B. Evidence of CMAR’s Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.
- C. Evidence of Owner’s Insurance—After receipt of the signed counterparts of the Agreement and all required insurance documentation, Owner shall promptly deliver to CMAR, with copies to each additional insured, as identified in the Contract, the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 Copies of Documents**

- A. Owner shall furnish to CMAR four printed copies of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed 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, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to CMAR for review. Owner may delegate the responsibilities under this provision to Owner’s Advisor.

### **2.03 Electronic Transmittals**

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner’s Advisor, Engineer, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner’s Advisor, and CMAR shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-

term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

#### 2.04 Construction Management

- A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:
  - 1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.
  - 2. Administer, coordinate, monitor, and report on construction progress and associated activities.
  - 3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.
  - 4. Manage the Work to meet Contract goals and objectives.
  - 5. Recommend action to the Owner related to the management of the Work.
  - 6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

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

#### 3.01 Intent

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project, or part thereof, to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, including any printed copies derived from such electronic versions, and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Owner's Advisor, in consultation with Engineer, will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and CMAR, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- G. Nothing in the Contract Documents creates:
1. any contractual relationship between Owner, Owner's Advisor, or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  2. any obligation on the part of Owner, Owner's Advisor, or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 Reference Standards

#### A. Standards, Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of receipt of Proposals, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, CMAR, Owner's Advisor, or Engineer from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements—Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.
2. CMAR's Review of Drawings and Specifications—If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's

Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Drawings and Specifications take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Drawings and Specifications and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier, whether or not specifically incorporated by reference as a Contract Document; or
  - b. the provisions of any 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 Interpretation of the Contract Documents

- A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
- B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

- A. CMAR and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents, or copies of any thereof, prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or 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; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes CMAR from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the Effective Date of the Contract, or as specified in Work Authorizations.

### 4.02 Starting the Work

- A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.

### 4.03 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction. CMAR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. CMAR shall report to Owner's Advisor whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and CMAR shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 Progress Schedule

- A. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.
  - 1. CMAR shall submit to Owner's Advisor for its information proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. CMAR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and CMAR may otherwise agree in writing.

### 4.05 Delays in CMAR's Progress

- A. If Owner, Owner's Advisor, Engineer, 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 Guaranteed Maximum Price or Contract Times.
- B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be 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. Such an adjustment will 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 third-party utility owners or other third-party entities, other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8; and
  4. Acts of war or terrorism.
- D. CMAR's entitlement to an adjustment of Contract Times or Guaranteed Maximum Price is limited as follows:
1. CMAR's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price 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. Such a concurrent delay by CMAR shall not preclude an adjustment of Contract Times to which CMAR is otherwise entitled.
  3. Adjustments of Contract Times or Guaranteed Maximum Price are subject to the provisions of Article 11.
- E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
  5. The impact on Guaranteed Maximum Price, in accordance with the provisions of Paragraph 11.07.

CMAR shall also furnish such additional supporting documentation as Owner or Owner's Advisor may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.

- G. Paragraph 8.03 addresses 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.

## **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 in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.
- 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 permanent improvements are to be made 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 and 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, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CMAR or those for which CMAR is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, 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 any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Advisor, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

- B. Removal of Debris During Performance of the Work—During the progress of the Work the CMAR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. Cleaning—Prior to Substantial Completion of the Work CMAR shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work CMAR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of 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 Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

### 5.03 Subsurface and Physical Conditions

- A. Reports and Drawings—The Supplementary Conditions identify:
  - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
  - 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; and
  - 3. Technical Data described in such reports and drawings.
- 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 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—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, Owner's Advisor, 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;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  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. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR's own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner's Advisor, the Engineer, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.
- F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.
- G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

#### 5.04 Differing Subsurface or Physical Conditions

- A. Notice by CMAR—If CMAR believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data or Supplemental Investigations results on which CMAR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. 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 or physical conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner's Advisor 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.

- B. Owner's Advisor's Review—After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with Engineer, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain 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 5.04.A; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption 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 Owner's Advisor's findings, conclusions, and recommendations.
- C. Owner's Statement to CMAR Regarding Site Condition—After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- D. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.
- E. 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 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; 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 through a Work Authorization;

- 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 Proposal Documents or Contract Documents to be conducted by or for CMAR prior to CMAR's making such commitment;
  - c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or
  - d. CMAR failed to give the written notice required by Paragraph 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 will 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.
- F. Underground Facilities; Hazardous Environmental Conditions—Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 Underground Facilities

- A. CMAR's Responsibilities—Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:
- 1. collaborating with Engineer during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;
  - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
  - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;
  - 4. coordination of the Work with the owners, including Owner, of such Underground Facilities, during construction; and
  - 5. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.
- B. Notice by CMAR—If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or

performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility.

C. Owner's Advisor's Review

1. Owner's Advisor will:

- a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
- b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;
- c. obtain any pertinent cost or schedule information from CMAR; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
- d. advise Owner and Engineer in writing of Owner's Advisor's findings, conclusions, and recommendations.

During such time, CMAR shall be responsible for the safety and protection of such Underground Facility.

D. Owner's Advisor's Statement to CMAR Regarding Underground Facility—After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

E. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the Underground Facility may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.

F. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, 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. 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;

- b. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
    - c. CMAR gave the notice required in Paragraph 5.05.B.
  2. 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 will be set forth in a Change Order.
  3. 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 Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, CMAR's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 Hazardous Environmental Conditions at Site

- A. Reports and Drawings—The Supplementary Conditions identify:
  1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  3. Technical Data described in such reports and drawings.
- B. 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 on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, 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;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

- C. 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.
- D. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, 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.
- E. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition 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 7.18; and (3) notify Owner, Owner's Advisor, and Engineer, and promptly thereafter confirm such notice in writing. Owner shall promptly consult with Owner's Advisor and Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Owner's Advisor and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with 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.
- F. 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.
- G. If Owner and CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, CMAR may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. 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 Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, Subcontractors, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 construction managers, engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs, arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 construction managers engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the 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.J obligates CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

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

- A. No later than the execution of the first Work Authorization the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The premium costs of such bonds are:
  - 1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
  - 2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.
- B. CMAR shall also furnish such other bonds, if any, as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Contract Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding

Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570, as amended and supplemented by the Bureau of the Fiscal Service, 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 must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner’s Advisor in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. 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.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to CMAR from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, CMAR shall provide a copy of the payment bond to such person or entity.
- I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

#### 6.02 Insurance—General Provisions

- A. Owner and CMAR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- 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 Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages 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, documentation of applicable self-

insured retentions, if allowed, and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, CMAR, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to CMAR, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract, if any. Upon request by CMAR or any other insured, Owner shall also provide other evidence of such required insurance, if any, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or CMAR to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or CMAR to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain, and maintain such insurance.
- G. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. 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, Owner's Advisor, Engineer, or third parties.
- H. CMAR shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner, Owner's Advisor and Engineer, and any other individuals or entities identified in the Supplementary Conditions as additional insureds on CMAR's liability policies, on each Subcontractor's commercial general liability policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any cancellation of the required coverage.
- J. If CMAR has failed to obtain and maintain required insurance, CMAR's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs, including but not limited to the cost of purchasing necessary insurance coverage, and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect, but is in no way obligated, 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 will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect CMAR or CMAR's interests. CMAR is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that CMAR deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on CMAR's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder must provide a copy of the notice to Owner's Advisor and each other insured.

#### 6.03 CMAR's Insurance

- A. Required Insurance—CMAR shall purchase and maintain worker's compensation, commercial general liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. General Provisions—The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete, as set forth in Paragraph 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. Additional Insureds—The CMAR's commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner, Owner's Advisor, and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby, including as applicable those arising from both ongoing and completed operations;
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by CMAR's acts or omissions, or the acts and omissions of those working on CMAR's behalf, in the performance of CMAR's operations.

#### 6.04 Builder's Risk and Other Property Insurance

- A. Builder's Risk—Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR shall purchase and maintain builder's risk insurance upon 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.

For purposes of the builder's risk and other required property insurance, "commencement of construction" first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

- B. Property Insurance for Facilities of Owner Where Work Will Occur—Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.07.D.
- C. Property Insurance for Substantially Complete Facilities—Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.07.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. Partial Occupancy or Use by Owner—If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.05, then Owner, directly, if it is the purchaser of the builder's risk policy, or through CMAR, will provide advance notice of such occupancy or use to the builder's risk insurer and obtain coverage or an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. Insurance of Other Property; Additional Insurance—If the express insurance provisions of the Contract do not require or address the insurance of a property Item or interest, then the entity or individual owning such property Item will be responsible for insuring it. 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 6.04, CMAR may do so at its expense.

#### 6.05 Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04, or an installation floater policy if authorized by the Supplementary Conditions, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner's Advisor, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
  - 1. 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, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.
  - 2. None of the above waivers extends 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 property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.05, after Substantial Completion pursuant to Paragraph 15.04, or after final payment pursuant to Paragraph 15.07, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against CMAR, Subcontractors, Owner's Advisor, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
- C. Owner waives all rights against CMAR, Subcontractors, Owner's Advisor, and Engineer, 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, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

- D. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Engineer, all individuals or entities identified in the Supplementary Conditions as insureds, their consultants, 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 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 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured will 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 6.04 must maintain such proceeds 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, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

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

#### 7.01 CMAR's Means and Methods of Construction

- A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or CMAR determines, that professional engineering or other design services are needed to carry out CMAR's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then CMAR shall cause such services to be provided by a properly licensed design professional, at CMAR's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner, Owner's Advisor, nor Engineer has any responsibility with respect to (1) CMAR's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by CMAR, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 Supervision and Superintendence

- A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

- B. At all times during the progress of the Work, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

#### 7.03 CMAR Services—Key Personnel and Subconsultants

- A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.
- B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

#### 7.04 Quality of CMAR Services

- A. The Owner's Advisor, with the concurrence of Owner and Engineer, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.
- B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

#### 7.05 Continuation or Termination of CMAR Services

- A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.
- B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

## 7.06 Labor; Working Hours

- A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.
- B. CMAR shall provide or furnish:
  - 1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;
  - 2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and
  - 3. All other construction-related and post-construction services described in the Contract Documents.
- C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Engineer for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions.
- D. 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 stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. CMAR will not perform Work on a Saturday, Sunday, or legal holiday. CMAR may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

## 7.07 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, CMAR shall provide 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, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner's Advisor, the 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 must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

## 7.08 “Or Equals”

- A. CMAR’s Request; Governing Criteria—Whenever an Item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Guaranteed Maximum Price has been based upon CMAR furnishing such Item as specified. The specification or description of such an Item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” Item is permitted, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Owner’s Advisor, in consultation with Engineer, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner’s Advisor will deem it an “or equal” item. For the purposes of this paragraph, a proposed Item of equipment or material will be considered functionally equal to an Item so named if:
    - a. in the exercise of reasonable judgment Owner’s Advisor, in consultation with Engineer, determines that the proposed 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 to Owner.
    - b. CMAR certifies that if the proposed Item is approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) the Item will conform substantially to the detailed requirements of the Item named in the Contract Documents.
- B. CMAR’s Expense—CMAR shall provide all data in support of any proposed “or equal” Item at CMAR’s expense.
- C. Owner’s Advisor’s Evaluation and Determination—Owner’s Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each “or-equal” request. Owner’s Advisor may require CMAR to furnish additional data about the proposed “or-equal” item. Owner’s Advisor, in consultation with Engineer, will be the sole judge of acceptability. No “or-equal” Item will be ordered, furnished, installed, or utilized until Owner’s Advisor’s review is complete and Owner’s Advisor, in consultation with Engineer, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner’s Advisor will advise CMAR in writing of any negative determination.

- D. Effect of Owner’s Advisor’s Determination—Neither approval nor denial of an “or-equal” request will result in any change in Guaranteed Maximum Price. The Owner’s Advisor’s denial of an “or-equal” request will be final and binding and may not be reversed through an appeal under any provision of the Contract.
- E. Treatment as a Substitution Request—If Owner’s Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an “or-equal” item, CMAR may request that Owner’s Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

- A. CMAR’s Request; Governing Criteria—Unless the specification or description of an Item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material under the circumstances described below.
- B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.
- C. The following provisions apply to all substitute requests:
  - 1. CMAR shall submit adequate information as provided below to allow Owner’s Advisor, in consultation with Engineer, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner’s Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.
  - 2. The requirements for review by Owner’s Advisor, in consultation with Engineer, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner’s Advisor may decide is appropriate under the circumstances.
  - 3. CMAR shall make written application to Owner’s Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:
    - a. will certify that the proposed substitute Item will:
      - 1) adequately perform the functions and achieve the results called for by the general design;
      - 2) be similar in substance to the Item specified; and
      - 3) be suited to the same use as the Item specified.

- b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute Item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute Item in the Work will require a change in any of the Contract Documents, or in the provisions of any other direct contract with Owner for other work on the Project, to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute Item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute Item from the Item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- D. Owner's Advisor's Evaluation and Determination—Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.
- E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Engineer in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.
- F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:
- 1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.
  - 2. Special Guarantee —Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.
  - 3. Reimbursement of Review Cost—Owner's Advisor and Engineer will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall

reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for making changes in the Contract Documents, or in the provisions of any other direct contract with Owner resulting from the acceptance of each proposed substitute.

4. CMAR's Expense—CMAR shall provide all data in support of any proposed substitute at CMAR's expense.
5. Effect of Owner's Advisor's Determination—If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor's denial of a substitution request will be final and binding and may not be reversed through an appeal under any provision of the Contract. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

#### 7.10 Concerning Subcontractors and Suppliers

- A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.
- D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.
- E. Prior to entry into any binding subcontract or purchase order, CMAR shall submit to Owner the identity of the proposed Subcontractor or Supplier, unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, and Owner has accepted it, either in writing or by failing to make written objection thereto, then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of

substantive, reasonable objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- H. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.
- J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- L. All Work performed for CMAR by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Owner's Advisor, and Engineer.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.
- N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.
- O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.
  - 1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.
  - 2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

#### 7.11 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 an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, Owner's Advisor, or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, 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 construction managers, engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors 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 construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.12 Permits

- A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.13 Taxes

- A. CMAR shall pay all sales, consumer, use, and other similar taxes required to be paid by CMAR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.14 Laws and Regulations

- A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's

Advisor, nor Engineer will be responsible for monitoring CMAR's compliance with Laws or Regulations.

- B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action.
- C. It is not CMAR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve CMAR of its obligations under Paragraph 3.03.
- D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the Contract in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.15 Record Documents

- A. CMAR shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, Contract Amendments, Work Packages, Work Authorizations, written interpretations and clarifications, and approved Shop Drawings. CMAR shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Owner's Advisor and Engineer for reference. Upon completion of the Work, CMAR shall deliver these record documents to Owner's Advisor.

#### 7.16 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 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.
- B. CMAR shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, any 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, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.
  - E. CMAR shall comply with all 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.
  - F. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR knows that 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.
  - G. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
  - H. CMAR shall inform Owner, Owner's Advisor, and Engineer of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Engineer's employees and representatives must comply while at the Site.
  - I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.
  - J. CMAR's duties and responsibilities for safety and protection will resume whenever CMAR or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.17 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.

## 7.18 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 damage, injury, or loss. CMAR shall give Owner's Advisor prompt written notice if CMAR believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of CMAR's response to an emergency. If Owner's Advisor, in consultation with Engineer, determines that a change in the Contract Documents is required because of an emergency or CMAR's response, a Work Change Directive or Change Order will be issued.

## 7.19 Submittals

### A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.
3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. Submittal Procedures for Shop Drawings and Samples—CMAR shall label and submit Shop Drawings and Samples to Owner’s Advisor for review by Engineer in accordance with the accepted Schedule of Submittals.
1. Shop Drawings
    - a. CMAR shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.
  2. Samples
    - a. CMAR shall submit the number of Samples required in the Specifications.
    - b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner’s Advisor may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.19.D.
- C. Proceeding without Engineer’s Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Engineer approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.
- D. Engineer’s Review of Shop Drawings and Samples
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer’s review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of 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, if any, will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer’s review and approval, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.
  4. Engineer’s review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.A.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. Owner’s Advisor, in consultation with Engineer, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.
  6. Engineer's review and approval, if any, of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Guaranteed Maximum Price, unless such changes are included in a Change Order.
  7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.
  8. CMAR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.19.D.4.
- E. Resubmittal Procedures for Shop Drawings and Samples
1. CMAR shall make required corrections 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 on previous Submittals.
  2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an Item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and CMAR shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.
  3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.
- F. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, CMAR shall confer with Owner's Advisor regarding the reason for the non-acceptance and resubmit an acceptable document.
    2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 4.04, 7.19, and 15.02.
  - G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.
- 7.20 CMAR's General Warranty and Guarantee
  - A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Engineer are entitled to rely on CMAR's warranty and guarantee.
  - B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.09:
    1. Owner shall give CMAR written notice of any defective Work within 60 days of the discovery that such Work is defective; and
    2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
  - C. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:
    1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or
    2. normal wear and tear under normal usage.
  - D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.
  - E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:
    1. Observations by Owner's Advisor or Engineer;
    2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;
    3. The acceptance of CMAR Services without objection;
    4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;

5. Use or occupancy of the Work or any part thereof by Owner;
  6. Any review and approval of a Shop Drawing or Sample submittal;
  7. The issuance of a notice of acceptability by Owner's Advisor;
  8. The end of the correction period established in Paragraph 15.09;
  9. Any inspection, test, or approval by others; or
  10. Any correction of defective Work by Owner.
- F. If the Contract requires CMAR to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to CMAR's performance obligations to Owner for the Work described in the assigned contract.

#### 7.21 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, 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 CMAR Services or the Work, provided that any such claim, action, loss, cost, judgment or damage 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 Subcontractor, any Supplier, subconsultant, or any individual or entity directly or indirectly employed by any of them to perform any of the CMAR Services or Work, or anyone for whose acts any of them may be liable.
- B. In claims against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any CMAR employee, or the survivor or personal representative of such employee, any Subcontractor, any Supplier, or any 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, the indemnification obligation under Paragraph 7.21.A will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.22 Delegation of Professional Design Services

- A. Owner may require CMAR to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.
- B. CMAR shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications,

certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.
- D. Owner, Owner's Advisor, and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by CMAR under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.
- F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. CMAR is not required to provide professional services in violation of applicable Laws and Regulations.

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

### **8.01 Other Work**

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. 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 that Owner has arranged to take place 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 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.

- D. CMAR shall do all cutting, fitting, and patching of the Work 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's Advisor and the others whose work will be affected.
- E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by CMAR is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 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 Supplementary Conditions 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. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 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 Work or to the property of CMAR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable

adjustment in Guaranteed Maximum Price will 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 or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- 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.
  - 1. 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 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 8.03.B.
  - 2. 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 CMAR.
- C. 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, Owner, Owner's Advisor, or Engineer, 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, Owner's Advisor, and Engineer, and their 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 construction managers, 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 9—OWNER'S RESPONSIBILITIES**

### **9.01 Communications to CMAR**

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

### **9.02 Replacement of Owner's Advisor or Engineer**

- A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

- B. Owner may at its discretion appoint an engineer to replace Engineer, provided CMAR makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.
- 9.03 Furnish Data
- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 Pay CMAR
- A. Owner shall make payments to CMAR when they are due as provided in the Agreement.
- 9.05 Lands and Easements; Reports, Tests, and Drawings
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to CMAR copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 Insurance
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 Change Orders
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 Inspections, Tests, and Approvals
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 Owner's Tasks in Support of CMAR Services
- A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.
  - B. Owner shall provide reasonable assistance to CMAR in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.
  - C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

- D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.
- E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.
  - 1. Advise CMAR of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to the Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.
  - 2. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of CMAR.
- F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

#### 9.10 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 and Regulations applicable to the performance of the Work. Owner will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

#### 9.11 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

#### 9.12 Evidence of Financial Arrangements

- A. Upon request of CMAR, Owner shall furnish CMAR reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract, including obligations under proposed changes in the Work.

#### 9.13 Safety Programs

- A. While at the Site, Owner's employees and representatives will comply with the specific applicable requirements of CMAR's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

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

#### 10.01 Owner's Advisor

- A. Owner's Advisor will be Owner's representative during the construction period.
- B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Engineer during construction are set forth below.

## 10.02 Visits to Site

- A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.
- B. 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. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer will report to Owner's Advisor regarding information obtained during such Site visits and observations.
- C. Owner's Advisor's and Engineer's visits and observations are subject to all the limitations on Owner's Advisor's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Engineer's visits or observations of CMAR's Work, neither Owner's Advisor nor Engineer will 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.

## 10.03 Determinations for Unit Price Work

- A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

## 10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

- A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.
  - 1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Engineer as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.
  - 2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Engineer's professional analysis, opinions, recommendations, and conclusions.
- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Engineer will show partiality to Owner or CMAR, and neither Owner's Advisor nor Engineer will be liable to Owner, CMAR, or others in

connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

- C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

#### 10.05 Limitations on Owner's Advisor's and Engineer's Authority and Responsibilities

- A. Neither Owner's Advisor's nor Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or 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 Owner's Advisor or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Advisor or 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. Neither Owner's Advisor nor Engineer will 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. Neither Owner's Advisor nor Engineer will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.
- C. Neither Owner's Advisor nor Engineer will 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. Owner's Advisor'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 CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

#### 10.06 Compliance with Safety Program

- A. While at the Site, Owner's Advisor's and Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and CMAR's safety programs of which Owner's Advisor and Engineer have been informed.

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### 11.01 Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Contract Amendment, Work Authorization, Change Order, Work Change Directive, or Field Order.
- B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to

modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

- C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.
- D. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design, as set forth in the Drawings, Specifications, or otherwise, or (3) other engineering matters, must be supported by Engineer's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Engineer.

#### 11.02 Change Orders

- A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:
  - 1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters; and
  - 3. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.
- C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:
  - 1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;
  - 2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

#### 11.03 Work Change Directives

- A. A Work Change Directive will not change the Guaranteed Maximum Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented

by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Guaranteed Maximum Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Guaranteed Maximum Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 Field Orders

- A. Owner's Advisor, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.
- B. If CMAR believes that a Field Order justifies an adjustment in the Guaranteed Maximum Price or Contract Times, then before proceeding with the Work at issue, CMAR shall submit a Change Proposal as provided herein.

#### 11.05 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters will be supported by Engineer's recommendation.
- B. Such changes in the Work 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 Guaranteed Maximum Price; 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 Unauthorized Changes in the Work

- A. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.18 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 Change of Contract Price

- A. The Contract Price may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Guaranteed Maximum Price with respect to the Work will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved;
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work determined in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

#### 11.08 Change of Contract Times

- A. The Contract Times may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 Change Proposals

- A. Purpose and Content—CMAR shall submit a Change Proposal to Owner’s Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner’s Advisor concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR’s recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:
  - 1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.
  - 2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.
  4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.
- C. Change Proposal Procedures
1. Submittal—CMAR shall submit each Change Proposal to Owner’s Advisor within 30 days after the start of the event giving rise thereto, or after such decision.
  2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner’s Advisor within 15 days after the submittal of the Change Proposal.
    - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
    - b. Change Proposals related to a change of Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

The supporting data must be accompanied by a written statement that the supporting data is accurate and complete, and that any requested time or price adjustment is the entire adjustment to which CMAR believes it is entitled as a result of said event.
  3. Owner’s Advisor’s Initial Review—Owner’s Advisor, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner’s Advisor concludes that additional supporting data is needed before conducting a full review and deciding regarding the Change Proposal, then Owner’s Advisor may request that CMAR submit such additional supporting data by a date specified by Owner’s Advisor, prior to Owner’s Advisor beginning its full review of the Change Proposal.
  4. Owner’s Advisor’s Full Review and Action on the Change Proposal—Upon receipt of CMAR’s supporting data, including any additional data requested by Owner’s Advisor, Owner’s Advisor, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR’s supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and CMAR. If Owner’s Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner’s Advisor’s inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  5. Binding Decision—Owner’s Advisor’s decision is final and binding upon Owner and CMAR, unless Owner or CMAR appeals the decision by filing a Claim under Article 12.
- D. Post-Completion—CMAR shall not submit any Change Proposals after Owner’s Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

#### 11.10 Notification to Surety

- A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents, including, but not limited to, Guaranteed Maximum Price or Contract Times, 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 12—CLAIMS

#### 12.01 Claims

- A. Claims Process—The following disputes between Owner and CMAR are subject to the Claims process set forth in this article:
  - 1. Appeals by Owner or CMAR of Owner's Advisor's decisions regarding Change Proposals;
  - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - 3. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after Owner's Advisor has issued a written recommendation of final payment pursuant to Paragraph 15.07.B.
- B. Submittal of Claim—The party submitting a Claim shall deliver it directly to the other party to the Contract promptly, but in no event later than 30 days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Owner's Advisor and Engineer, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by CMAR seeking an increase in the Contract Times or Contract Price, CMAR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CMAR's knowledge and belief the amount of time or money requested accurately reflects the full amount to which CMAR is entitled.
- C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Owner's Advisor and Engineer.
- D. Mediation
  - 1. At any time after initiation of a Claim, Owner and CMAR may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  - 2. If Owner and CMAR agree to mediation, then after 60 days from such agreement, either Owner or CMAR may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the

mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and CMAR shall each pay one-half of the mediator's fees and costs.
- E. Partial Approval—If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim—If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not act on the Claim within 90 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results—If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

### 13.01 Allowances

- A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.
- B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Advisor.
- C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.
- D. Cash Allowances—CMAR agrees that:
  1. the cash allowances include the cost to CMAR, less any applicable trade discounts, of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. CMAR's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

- E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

#### 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 Guaranteed Maximum Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified Item of Unit Price Work times the estimated quantity of each Item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.
- 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. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR. Owner's Advisor will review with CMAR the Owner's Advisor's preliminary determinations on such matters before rendering a written decision thereon, by recommendation of an Application for Payment or otherwise. Owner's Advisor's written decision thereon will be final and binding except as modified by Owner's Advisor to reflect changed factual conditions or more accurate data upon Owner and CMAR, and the final adjustment of Guaranteed Maximum Price will be set forth in a Change Order, subject to the provisions of the following Paragraph.
- E. Adjustments in Unit Price
  1. CMAR or Owner shall be entitled to an adjustment in the unit price with respect to an Item of Unit Price Work if:
    - a. the quantity of the Item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and
    - b. CMAR's unit costs to perform the Item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.
  3. Adjusted unit prices will apply to all units of that item.

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

#### 14.01 Access to Work

- A. Owner, Owner's Advisor, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. CMAR shall provide them with proper and safe conditions for such access and

advise them of CMAR's safety procedures and programs so that they may comply with such procedures and programs as applicable.

#### 14.02 Tests, Inspections, and Approvals

- A. CMAR shall give Owner's Advisor timely notice of readiness of the Work, or specific parts thereof, for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work, or part thereof, specifically to be inspected, tested, or approved by an employee or other representative of such public body, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.
- D. 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. to attain acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Owner's Advisor.

- E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Engineer, or another designated individual or entity, then CMAR shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work, or the work of others that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

#### 14.03 Defective Work

- A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.
- B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.
- C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Engineer has actual knowledge will be given to CMAR.
- D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties—When correcting defective Work, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, CMAR shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and CMAR are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If such acceptance occurs prior to final payment, to Engineer's confirmation 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 claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work; such costs to be approved by Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, CMAR shall pay an appropriate amount to Owner.

#### 14.05 Uncovering Work

- A. Owner's Advisor has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Engineer's observation, and then replace the covering, all at CMAR's expense.

- C. If Engineer or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Engineer, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, CMAR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction, including but not limited to all costs of repair or replacement of work of others, and pending CMAR's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, CMAR shall be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CMAR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 Owner May Stop the Work

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

#### 14.07 Owner May Correct Defective Work

- A. If CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, 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. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Engineer, and their consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against CMAR as set-offs against payments due under Article 15. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMAR's defective Work.

- D. CMAR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

### 15.01 Payment for CMAR Services

- A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

### 15.02 Progress Payments

#### A. Basis for Progress Payments

1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.
2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR during the pay period.

#### B. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment, but not more often than once a month, CMAR shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by CMAR for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. Review of Applications
1. Owner's Advisor will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment. In the latter case, CMAR may make the necessary corrections and resubmit the Application.
  2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on Owner's Advisor's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor'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 13.02, 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 Owner's Advisor's responsibility to observe the Work.
  3. By recommending any such payment Owner's Advisor 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 Owner's Advisor in the Contract; 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 Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:
    - a. to supervise, direct, or control the Work;
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
    - c. for CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;
    - d. to make any examination to ascertain how or for what purposes CMAR has used the money paid by Owner; 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. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.
  - 6. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
    - 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. Owner's Advisor 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.
- D. Payment Becomes Due
- 1. Ten days after Owner's Advisor's presentation of the Application for Payment to Owner with Owner's Advisor's recommendation, the amount recommended, subject to any Owner set-offs, will become due, and when due will be paid by Owner to CMAR.
- E. Reductions in Payment by Owner
- 1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, Owner is entitled to impose a set-off against payment based on any of the following:
    - a. Claims have been made against Owner based on CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from 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 for advisory services or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;
    - f. The Work is defective, requiring correction or replacement;

- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
  - i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of CMAR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - 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;
  - l. Claims have been made or costs have been incurred arising from CMAR Services; or
  - m. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, 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 will be binding on CMAR unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.02.D.1 and subject to interest as provided in the Agreement.
- F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

#### 15.03 CMAR's Warranty of Title

- A. CMAR warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.04 Substantial Completion

- A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's

Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed punch list of items to be completed or corrected before final payment.

- B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.
- C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Owner's Advisor as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Engineer, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Engineer, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 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 Owner's Advisor 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.

#### 15.05 Partial Use or Occupancy; Completion of Authorized Work

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Advisor, Engineer, and CMAR agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its

intended purpose without significant interference with CMAR's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Engineer will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.
2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Engineer will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.
5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.

**B. Substantial Completion of Authorized Work**

1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.
2. CMAR, Owner, Owner's Advisor, and Engineer will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

#### 15.06 Final Inspection

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

#### 15.07 Final Payment

##### A. Application for Final Payment

1. After Owner's Advisor, in consultation with Engineer, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, as provided in Paragraph 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR may make application for final payment.
2. The final Application for Payment must be accompanied, except as 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 duly pending Change Proposals and Claims; 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 the releases or waivers of Liens specified in Paragraph 15.07.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 might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any 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, or Owner at

its option may issue joint checks payable to CMAR and specified Subcontractors and Suppliers.

- B. Owner's Advisor's Review of Final Application and Recommendation of Payment—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.
- C. Notice of Acceptability of the Work—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Engineer's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.
- D. Completion of Work—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.
- E. Final Payment Becomes Due—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to CMAR within 30 days of Owner's receipt of the final Application for Payment from Owner's Advisor.

#### 15.08 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- 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 as a Claim or appealed under the provisions of Article 17.

#### 15.09 Correction Period

- A. Scheduled Correction Period Inspection—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Engineer to ascertain whether any portion of the Work or the repair of

any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

- B. If within one year after the date of Substantial Completion, or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. return to the Site with Owner, Owner's Advisor and Engineer to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;
  2. consult with Owner's Advisor and Engineer regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;
  3. correct the defective repairs to the Site or such adjacent areas;
  4. correct such defective Work;
  5. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  6. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- C. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.
- D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such correction or repair or such removal and replacement, including but not limited to all costs of repair or replacement of work of others. CMAR's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- E. In special circumstances where a particular Item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that Item may start to run from an earlier date if so provided in the Specifications.
- F. Where defective Work, and damage to other Work resulting therefrom, has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- G. CMAR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION AND TERMINATION**

### **16.01 Owner May Suspend CMAR Services or Work**

- A. At any time and without cause, Owner may suspend the CMAR Services or the Work, or any portion thereof, for a period of not more than 90 consecutive days by written notice to CMAR and Owner's Advisor. Such notice will fix the date on which CMAR Services or Work will be resumed. CMAR shall resume the CMAR Services or Work on the date so fixed. CMAR shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. With respect to a suspension of the Work, any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 Owner May Terminate for Cause**

- A. The occurrence of any one or more of the following events will constitute a default by CMAR and justify 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;
  - 2. Failure of CMAR to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety 10 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:
  - 1. declare CMAR to be in default, and give CMAR, and any surety, written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude CMAR from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if CMAR within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and

damages, including but not limited to all fees and charges of Owner's Advisors, engineers, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, 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.

- F. 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, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.
- G. If and to the extent that CMAR has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR shall be paid for without duplication of any items:
  - 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; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. CMAR shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 CMAR May Stop Work or Terminate

- A. If, through no act or fault of CMAR, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner's Advisor fails to act on any Application for Payment within 30 days after it is submitted, or (3) 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 Owner's Advisor, and provided Owner or Owner's Advisor do 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.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner's Advisor has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay CMAR any sum finally determined to be due, CMAR may, 7 days after written notice to Owner and Owner's Advisor, 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 submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAR's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 Methods and Procedures**

- A. Disputes Subject to Final Resolution—The following disputed matters are subject to final resolution under the provisions of this article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  - 2. Disputes between Owner and CMAR concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. Final Resolution of Disputes—For any dispute subject to resolution under this article, Owner or CMAR may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 Giving Notice**

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Owner's Advisor, CMAR, or Engineer when required, it will be deemed to have been validly given only if delivered:
  - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 Computation of Times**

- A. When any period is referred to in the Contract 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.

### 18.03 Cumulative Remedies

- A. 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, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 18.04 Limitation of Damages

- A. With respect to Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner, Owner's Advisor, nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to CMAR for any claims, costs, losses, or damages sustained by CMAR on or in connection with any other project or anticipated project.

### 18.05 No Waiver

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

### 18.06 Survival of Obligations

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

### 18.07 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

### 18.08 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent, except to the extent that the effect of this restriction may be limited by law, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

### 18.09 Successors and Assigns

- A. Owner and CMAR each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 18.10 Headings

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

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## 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**

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

SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

- B. Evidence of CMAR's Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner copies of the policies, including all endorsements, and identification of applicable self-insured retentions and deductibles, of insurance required to be provided by CMAR in this Contract (other than insurance such as builder's risk that is required at a later date). CMAR may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- C. Evidence of Owner's Insurance—After receipt from CMAR of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to CMAR copies of the policies of insurance to be provided by Owner in this Contract, if any. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

### **2.02 Copies of Documents**

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

- A. Owner shall furnish to CMAR only electronic 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 executed counterpart of the Agreement). 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 Supplement Paragraph 2.03 of the General Conditions by adding the following paragraph:

D. Requests by CMAR for Electronic Documents in Other Formats

1. Release of any Electronic Document versions of the Project design documents in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be at the sole discretion of the Owner.
2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project design documents and other Project information requested by CMAR (Request) in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which CMAR agrees:
  - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely and is being provided to CMAR on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, CMAR is advised and acknowledges that the content may not be suitable for CMAR's application or may require substantial modification and independent verification by CMAR. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.
  - b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to CMAR under the request are only for convenience of CMAR. Any conclusion or information obtained or derived from such data will be at the CMAR's sole risk and the CMAR waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
  - c. CMAR shall indemnify and hold harmless Owner, OA, and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from CMAR's use, adaptation, or distribution of any Electronic Documents provided under the Request.
  - d. CMAR agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information, in source or modified file format, to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to CMAR's subcontractors. CMAR warrants that subsequent use by CMAR's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.
3. In the event that Owner elects to provide or directs the Engineer to provide to CMAR any CMAR-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to CMAR, the Owner shall be reimbursed by CMAR on an hourly basis at \$200.00 per hour for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

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

3.01 Intent

SC-3.01 Delete Paragraph 3.01.C in its entirety.

**ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

4.05 Delays in CMAR’s Progress

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraph:

- 5. *Weather-Related Delays.* If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Owner’s Advisor or Engineer within five days of the end of the abnormal weather condition event.

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

5.02 Use of Site and Other Areas

SC-5.02 Add the following new paragraph immediately after 5.02.D:

- E. The responsibility for protection and safekeeping of equipment and materials on or near the Site is entirely that of CMAR, and no claim shall be made against Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by stored materials and equipment, CMAR shall immediately move the same. No materials or equipment may be placed upon Owner’s property until Owner has agreed to the location contemplated by the CMAR to be used for storage.

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: **[Identified and amended at GMP]**

Report Title	Date of Report	Technical Data
		<b>[Identify Technical Data]</b>

- 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: **[Identified and amended at GMP]**

Drawings Title	Date of Drawings	Technical Data
		<b>[Identify Technical Data]</b>

- 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 or have not already been provided to CMAR at a mutually agreeable location.

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
There are no known reports or hazards.	N/A	N/A

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
There are no known reports or hazards.	N/A	N/A

SC-5.06.I Delete Paragraph 5.06.I in its entirety and renumber the subsequent paragraphs.

**ARTICLE 6—BONDS AND INSURANCE**

6.01 Performance, Payment, and Other Bonds

SC-6.01 Delete 6.01.A in its entirety and insert the following in its place:

- A. No later than the execution of the first Work Authorization, the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR’s obligations under the Contract. These bonds must remain in effect until two years after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, or other provisions of the Contract. The premium costs of such bonds are:

1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.

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

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

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

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.09.A of the General Conditions is hereby revised to be two years after Substantial Completion.

## 6.02 Insurance—General Provisions

SC-6.02 Delete the second sentence of Paragraph 6.02.B and replace it with the following:

Except any Colorado public entity self-insurance pool, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. CMAR may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.02 Delete Paragraph 6.02.E. in its entirety.

SC-6.02.N. Add the following clause to the end of the paragraph after insured:

“, and to Owner if such notice respects any policy of insurance required to be purchased and maintained by CMAR under this Contract.”

## 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.
- 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, in the following minimum amounts:

<b>Workers’ Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers’ Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman’s)	Statutory
Foreign voluntary workers’ compensation (employer’s responsibility coverage), if applicable	Statutory
<b>Employer’s Liability</b>	
Each accident	\$ 1,000,000
Each employee	\$ 1,000,000
Policy limit	\$ 1,000,000

- 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, and to Owner, Owner’s Advisor or Engineer upon request at any time during the three-year period.
  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	\$ 2,000,000
Products—Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000

- 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>
<b>Bodily Injury</b>	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
<b>Property Damage</b>	
Each Accident	\$ 1,000,000
<b>[or]</b>	

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$ 1,000,000

- 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	\$ 5,000,000
General Aggregate	\$ 5,000,000

- L. Coverage limits—The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.
- M. Contractor’s Pollution Liability Insurance—CMAR shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from CMAR’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

<b>Contractor’s Pollution Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence/Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

- N. Contractor’s Professional Liability Insurance—CMAR shall purchase and maintain professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by CMAR or by others for whom CMAR is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

<b>Contractor’s Professional Liability</b>	<b>Policy limits of not less than:</b>
Each Claim	\$ 1,000,000
Annual Aggregate	\$ 1,000,000

- O. [Intentionally omitted.]
- P. 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.

<b>Unmanned Aerial Vehicle Liability Insurance</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$ 1,000,000
Privacy Injury Aggregate	\$ 1,000,000

Q. Other Required Insurance

6.04 Builder’s Risk and Other Property Insurance

SC-6.04 Amend Paragraph 6.04.A as follows:

Remove the following language from the paragraph: “Unless otherwise provided in the Supplementary Conditions.”

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. Builder’s Risk Requirements—The builder’s risk insurance must:

1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following perils: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage, other than that caused by flood.
  - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
  - b. 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 will be provided through other insurance policies acceptable to Owner and CMAR.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, 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 constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

3. cover expenses incurred in the repair or replacement of any insured property, including but not limited to fees and charges of contractors, owners representatives, engineers, and architects.
4. 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.
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.07.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, CMAR, Subcontractors of every tier, and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, CMAR, and Subcontractors of every tier, include as insureds the following:
  - a. **Not applicable**
11. include, in addition to the Guaranteed Maximum Price amount, the value of the following equipment and materials to be installed by the CMAR but furnished by the Owner or third parties:
  - a. **Not applicable**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of \$[amount].
13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:
  - a. **Not applicable**
14. The party responsible for purchasing and maintaining the builder's risk insurance is responsible for insurable losses in excess of the coverage limits.

**Guidance Notes: Builder's Risk Deductibles**—Paragraph 6.04.A of the General Conditions requires builder's risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. SC-6.04.H provides a means of identifying a primary deductible; other specific deductibles may also be added. It is common for builder's risk policies to feature several different

deductibles, typically including primary deductibles and specific deductibles applicable to specific types of loss, such as flood and earth movement.

In some cases, the Owner, as the party directing or specifying the content of the insurance-related Supplementary Conditions, will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible.

The builder's risk policies available for projects in coastal and other high-hazard areas may have special deductible provisions for wind and flood damage, hurricanes, earthquakes, and other specific perils. Such deductibles may be determined based on a percentage of the property value at the time of loss, rather than being stated as a specific dollar amount. SC-6.04.H should be revised to reflect coastal or other local conditions that change the approach to deductibles.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- G. Builder's Risk and Other Property Insurance Deductibles—The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.
  - 1. The builder's risk policy, or if applicable, the installation floater, will be subject to a deductible amount of no more than \$[specify amount] for direct physical loss in any one occurrence.

**Guidance Notes: Installation Floater**—An installation floater is insurance carried by a contractor (here, the CMAR), covering only the materials and equipment to be incorporated in the contractor's work. It typically does not insure against losses that occur after installation. In most cases, builder's risk insurance offers broader coverage, covers the Owner, CMAR, and Subcontractors, and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder's risk policy. For example, on a pipeline project it may be adequate from a risk management standpoint to insure against loss or damage to the piping until installation, at which time there is little further risk from standard insurable perils such as fire or windstorm. Because the Owner will typically not be insured, the use of an installation floater also assumes a risk management decision that protecting the CMAR's interest in the materials and equipment is adequate to insure the best interests of the project. See EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

If, after consultation with its risk managers, Owner elects to allow purchase of an installation floater rather than a builder's risk policy, the following SC-6.04.A should be included as a Supplementary Condition; GC-6.04.B, GC-6.04.C, GC-6.04.D, and GC-6.04.E should be retained; SC-6.04.F, Builder's Risk Requirements, should not be included; and SC-6.04.H, Builder's Risk and other Property Insurance Deductibles, should be included. Owner should determine whether soft cost and related coverage is available and warranted, and if so modify the contents of SC-6.04.G, Coverage for Completion Delays, for the installation floater requirement.

SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:

- A. Installation Floater

1. CMAR shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (Covered Property). Coverage under the CMAR’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:
  - a. of the CMAR, and Covered Property of others that is in CMAR’s care, custody, and control;
  - b. while in transit to the Site, including while at temporary storage sites;
  - c. while at the Site awaiting and during installation, erection, and testing;
  - d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.
2. The installation floater coverage cannot be contingent on an external cause or risk or limited to property for which the CMAR is legally liable.
3. The installation floater coverage will be in an amount adequate to protect CMAR’s interest in the Covered Property. The CMAR will be solely responsible for any deductible carried under this coverage.
4. This policy will include a waiver of subrogation applicable to Owner, CMAR, OA, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

**Guidance Notes: Builder’s Risk Waivers of Claims and Subrogation**—Paragraph 6.05 of the General Conditions contains a mutual waiver of property loss claims, and waiver of the builder’s risk insurer’s subrogation rights. To the extent these provisions shield the Owner, the CMAR, and the Subcontractors from disputes regarding losses that are covered by insurance, they are generally accepted risk management measures. As published, the provisions also bring the Engineer and Owner’s Advisor—integral and essential members of the Project team—within the scope of their protection. However, the trend in the insurance industry, as of 2023, appears to be shifting against the acceptance of waivers (such as those on Paragraph 6.05) that protect the interests of architects/engineers. The user should consult with a risk manager or insurance professional to determine whether any revision of Paragraph 6.05 is advisable, based on the availability (or lack of availability) of price-competitive builder’s risk policies that allow for comprehensive waivers of subrogation rights.

## 6.05 Property Losses; Subrogation

SC-6.05 Delete Paragraph 6.05 in its entirety and insert the following in its place:

- A. All policies purchased in accordance with Paragraph 6.04, 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 Owner’s Advisor, Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. CMAR waives all rights against Owner and its officers, employees and agents 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 Work; and, in addition, waive all such rights against Owner’s Advisor, Engineer, its consultants, all Subcontractors, all individuals or entities

identified in the Supplementary Conditions 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. CMAR shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Owner's Advisor, Engineer, CMAR, all individuals or entities identified in the Supplementary Conditions as insureds, 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 Work.

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

7.03 Delete Paragraph 7.03 in its entirety.

7.04 Delete Paragraph 7.04 in its entirety.

7.05 Delete Paragraph 7.05 in its entirety.

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 i) on Mondays through Fridays, between the hours of 7:00 a.m. and 8:00 p.m. or dusk, whichever is earlier and (ii) on Saturdays, Sundays and holidays, between the hours of 8:00 a.m. and 7:00 p.m. or dusk, whichever is earlier.
2. Owner's legal holidays are New Years Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day.

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

- E. CMAR shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for OA's or Engineer's services, including but not limited to, construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If CMAR is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

7.11 Patent Fees and Royalties

Delete Paragraph 7.11.B in its entirety.

7.13 Taxes

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

Owner is exempt from payment of sales and compensating use taxes of the State of Colorado 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.
1. 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.

#### 7.15 Record Documents

SC-7.15.A Amend paragraph by adding the following after "written interpretations and clarifications,":  
Manufacturers' Certifications,

#### 7.21 Indemnification

SC-7.21.A Add the words "or willful or wanton" after the word "negligent."

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

No suggested Supplementary Conditions in this Article.

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

9.09 Delete Paragraph 9.09 in its entirety.

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

No suggested Supplementary Conditions in this Article.

### **ARTICLE 11—CHANGES TO THE CONTRACT**

No suggested Supplementary Conditions in this Article.

### **ARTICLE 12—CLAIMS**

No suggested Supplementary Conditions in this Article.

### **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**

15.02 Progress Payments

SC-15.02.B.4 – Add the following language at the end of paragraph:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the CMAR.

SC-15.02.D.1 – Delete paragraph in its entirety and insert the following in its place:

The Application for Payment with Owner Advisor’s recommendations will be presented to the Owner for consideration. If the Owner finds the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.02.E will become due thirty (30) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the CMAR.

SC-15.03.A – Amend paragraph by striking out the following text: “7 days after”.

#### 15.04 Substantial Completion

SC-15.04 Add the following new subparagraph to Paragraph 15.04.B:

1. 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 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.

#### SC-15.07 Final Payment

SC-15.07 Modify the first sentence of 15.07.A.1 as follows:

After Owner’s Advisor, in consultation with *Owner and Engineer*, determines that CMAR has ....

#### SC-15.09 Correction Period

SC-15.09.B Delete the first clause of Paragraph 15.09.B in its entirety and insert the following in its place:

- I. If within two years after the date of Substantial Completion, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR’s repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

....

SC-15.08.H Add Paragraph 15.08.H to read as follows:

- J. H. In Owner’s discretion, a warranty inspection shall be held during the sixty (60) day period prior to the expiration of the two-year warranty period. CMAR shall provide an authorized representative at such inspection to represent CMAR’s interests.

## **ARTICLE 16—SUSPENSION AND TERMINATION**

Sc-16.02.E - Delete paragraph in its entirety and insert the following in its place:

- E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, 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.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 18—MISCELLANEOUS**

SC-18.01 Giving Notice

SC-18.01.A. Amend Paragraph 18.01.A.3 to read as follows:

- 3. upon confirmation of receipt by the intended recipient, by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

SC-18.05 No Waiver

SC-180.5B. Add Paragraph 18.05.B to read as follows:

- A. CMAR understands and agrees that any waiver granted by Owner or Owner's Advisor of any term or provision of the Contract shall not constitute a precedent. Neither the acceptance of the Work Owner or Owner's Advisor nor the payment of all or part of the sum due CMAR hereunder shall constitute a waiver by Owner of any claim Owner may have against CMAR.

SC-18.11 Venue

SC-11 Add Paragraph 18.11 to read as follows:

- B. Venue for any legal proceeding shall be in the County of Weld, State of Colorado.

SC-18.12 Appropriation.

SC-18.12 Add Paragraph 18.12 to read as follows:

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless Owner provides written assurance to the CMAR that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Contract.
- B. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of Owner payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being

appropriated, budgeted, and otherwise made available. This Contract shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

SC-18.13 Independent Contractor

SC-18.13 Add Paragraph 18.13 to read as follows:

- A. CMAR understands and agrees that CMAR is an independent contractor and not an employee of Owner. Owner shall not provide benefits of any kind to CMAR. Owner shall not be responsible for withholding any portion of CMAR's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. CMAR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM OWNER. CMAR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with Owner, CMAR may engage in any other lawful business activities during the term of this Contract.

SC-18.14 Governmental Immunity

SC-18.14 Add Paragraph 18.14 to read as follows:

- A. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. and under any other applicable law.

SC-18.15 Arbitration

SC-18.15 Add Paragraph 18.15 to read as follows:

- A. Notwithstanding any provision in the Contract Documents to the contrary, Owner shall have the sole right to determine whether to submit a dispute or other matters to arbitration. It shall be otherwise presumed that all disputes and matters shall be resolved by a court of competent jurisdiction.

SC-18.16 Colorado Public Works Act

SC-18.16 Add Paragraph 18.16 to read as follows:

- A. Notwithstanding any other provision of the Contract, Owner may withhold funds if required to do so pursuant to the Colorado Public Works Act, Section 38-26-101, et seq., C.R.S.

SC- 18.17 Colorado Labor

SC-18.17 Add Paragraph 18.17 to read as follows:

- A. Pursuant to Title 8, Article 17, C.R.S., CMAR agrees, except as otherwise waived by Owner, to employ Colorado labor to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under the Contract. "Colorado labor" means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

SC-18.18 Costs and Attorney Fees

SC-18.18 Add Paragraph 18.18 to read as follows:

- A. In the event of litigation enforcing or interpreting the terms of the Contract, to the extent permitted by law, recognizing that Owner is prohibited by the Johnstown Home Rule Charter, Colorado Constitutional and Colorado law from expending unbudgeted and unappropriated funds, the prevailing party shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

SC-18.19 No Presumption

SC-18.19 Add Paragraph 18.19 to read as follows:

Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

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