

ATTACHMENT III

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

Date Issued:

School District Project No.: RFQ # 19-20-01

Project Name: Lake Havasu High School and Thunderbolt Middle School:
Athletic Field Improvements and Administration Additions and
Renovations

OWNER

LHUSD GOVERNING BOARD

for and on behalf of

**LAKE HAVASU UNIFIED SCHOOL
DISTRICT #1**

2200 Havasupi Blvd, Lake Havasu City, AZ 86403

CMAR

INSERT NAME

• CONSTRUCTION MANAGER AT RISK (CMAR) •

AGREEMENT

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CMAR**

Agreement made this INSERT DATE in the year Two Thousand Twenty , by and between **OWNER:** Lake Havasu Unified School District #1, located at 2200 Havasupai Blvd., Lake Havasu City, AZ 86403 and **CMAR:** INSERT NAME located at INSERT ADDRESS for services in connection with the following **PROJECT:**

INSERT DESCRIPTION

In consideration for the mutual covenants and obligations contained herein, **Owner** and **CMAR** agree as set forth herein.

ARTICLE 1

Scope of Work

1.1 **CMAR** shall perform all pre-construction services and construction services and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work described in and reasonably inferable from the Contract Documents. “**Work**” will have the meaning specified in the General Conditions. This Agreement (defined in the General Conditions) covers services by the **CMAR** for the pre-construction phase (consisting of the traditional Program Development subphase, Schematic Design subphase, Design Development subphase and Construction Documents subphase of design development), the construction phase, the commissioning phase and the warranty period phase.

ARTICLE 2

Contract Documents

- 2.1 The Contract Documents (defined in the General Conditions) are comprised of the following in order of precedence and are incorporated herein by reference:
- 2.1.1 This Standard Form of Agreement Between Owner and the Construction Manager at Risk the **General Conditions**, Change Orders and written modifications executed by Owner and CMAR (including, among others, the Interim GMP Setting Modification under **Section 2.2.2.4** of the General Conditions and the Final GMP Setting Modification under **Section 2.2.2.5** of the General Conditions).
 - 2.1.2 **Owner’s** Project Criteria developed by **Owner** and Design Professional and any architectural program developed by **Owner** and Design Professional.
 - 2.1.3 Design Submission Documents (**defined in the General Conditions**) as they are approved by **Owner**;
 - 2.1.4 **Owner’s** Request for Qualifications (**RFQ**) with all addenda and exhibits thereto, and the **CMAR’s** proposal or submission of qualifications as required by the RFQ.
 - 2.1.5 **Technical Specifications, Supplemental General Conditions, Project Manual**
 - 2.1.6 The following other documents, if any, forming part of the Contract Documents:

*(List, for example, Unit Price Schedules, **CMAR’s** Allowances, **Owner’s** Permit List, if any, and other Contract Documents).*

ARTICLE 3
Interpretation and Intent

- 3.1 The Contract Documents are complementary and must be interpreted in harmony to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity, the Contract Documents shall take precedence in the order in which they are listed in **Section 2.1**.
- 3.2 Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the Contract Documents or if not specifically defined, their ordinary and common meaning.
- 3.3 The Contract Documents form the entire agreement between Owner and CMAR and by incorporation herein are as fully binding on the parties as if repeated herein. The Contract Documents supersede all prior discussions and negotiations. The Contract Documents may be amended or modified only in writing executed by Owner and CMAR.

ARTICLE 4
Ownership of Documents

- 4.1 The Owner, through its separate agreement with the Design Professional, shall own all drawings, specifications, and other documents and electronic data furnished by Design Professional. CMAR shall have no right or interest in such documents, except for the right to use in rendering services during the pre-construction phase and construction phase.
- 4.2 The Owner shall also own any and all estimates of Construction Costs and other estimates and all schedules, value engineering submissions, or other work product furnished by CMAR or Design Professional to Owner.

ARTICLE 5
Contract Time

- 5.1 Owner and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. CMAR understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration to this Agreement.

“**Contract Time(s)**” means, as to the entire Work, as to each phase of the Work if the Work is to be done in phases and as to each portion of the Work that the Owner has agreed to accept separately, (I) the Date of Commencement, (II) any interim milestone dates agreed to by Owner and CMAR, (III) the time for Substantial Completion, and (IV) the time for Final Completion, as specified in this **Article 5** and if there is to be phasing as provided in accordance with **Section 5.7.1** below.

- 5.2 Date of Commencement.
 - 5.2.1 The preconstruction work shall commence within five (5) days of CMAR’s receipt of Owner’s notice to proceed for the preconstruction work.
 - 5.2.2 The construction Work shall commence (hereinafter referred to as the “**Date of Commencement**”) within five (5) days of CMAR’s receipt of Owner’s notice to proceed for the construction Work, for a phase of the Work if the Work is to be done in phases or for a portion if the Work the Owner has agreed to accept a portion separately, unless the parties mutually agree otherwise in writing. If the Work is done in phases or portions, the Date of Commencement for the entire Work is the Date of Commencement of the first phase or portion.

5.3 Substantial Completion.

- 5.3.1 Substantial Completion (defined in the General Conditions) of the entire Work shall be achieved no later than **INSERT DATE (XXX)** days after the Date of Commencement for the entire Work, subject to adjustments in accordance with the Contract Documents
- 5.3.2 If the Work is to be done in phases or if the Owner has agreed to accept one or more portions of the Work separately, there will be a separate Substantial Completion Date for each phase or portion. The Substantial Completion Date for each phase or portion will be established by the Owner, in the case of phasing as provided in **Section 5.7.1** below
- 5.3.3 The date for Substantial Completion of the entire Work or for a phase or portion of the Work is referred to as the “**Substantial Completion Date**”.
- 5.3.4 To the extent specified below in this **Section 5.3.4**, interim milestones shall be achieved as follows, subject to adjustments in accordance with the Contract Documents:

<u>Part of the Work</u>	<u>Interim Milestone Date</u>
Phase One-GMP#1 <u>INSERT NAME</u>	<u>DATE, 2020</u>
Phase Two – GMP#2 <u>INSERT NAME</u>	<u>DATE, 2020</u>
Phase 3 – GMP#2 <u>INSERT NAME</u>	<u>DATE, 2020</u>

- 5.4 Final Completion. Final Completion of the entire Work or portion or phase thereof shall be achieved within thirty (30) calendar days after the date established for Substantial Completion of the entire Work or the portion or phase of the Work, respectively.
- 5.5 Requirement for Changes to Contract Time(s). Changes to Contract Time(s) maybe made only by written Change Order executed by CMAR and Owner.
- 5.6 Liquidated Damages. CMAR understands that if Substantial Completion of the entire Work, of any phase of the Work if the Work is to be done in phases or of a portion of the Work that the Owner has agreed to accept a portion separately is not attained by the Substantial Completion Date(s) provided in **Section 5.3** or as provided in **Section 5.7.1** below, as adjusted in accordance with the Contract Documents (a “**Scheduled Substantial Completion Date**”), Owner will suffer damages which are difficult to specify and accurately ascertain. CMAR agrees that if Substantial Completion of the entire work, of any phase of the Work if the Work is to be done in phases or of any portion of the Work that the Owner has agreed to accept a portion separately is not attained by the respective Scheduled Substantial Completion Date, CMAR shall pay Owner **One Thousand dollars (\$ 1,000.00)** as liquidated damages for each calendar day that Substantial Completion of the entire Work, of any phase of the work if the Work is to be done in phases or of any portion of the Work that the Owner has agreed to accept separately extends beyond the respective Scheduled Substantial Completion Date. In addition, if Final Completion of the entire Work, of any phase of the Work if the Work is to be done in phases or of any portion of the Work that the Owner has agreed to accept separately is not attained within the time period prescribed by Section 5.4, CMAR shall pay Owner **One Thousand dollars (\$ 1,000.00)** as liquidated damages for each calendar day that Final Completion of the entire Work, of any phase of the work if the Work is to be done in phases or of any portion of the Work that the Owner has agreed to accept

separately extends beyond the required date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion or both of the entire Work, of any phase of the Work if the Work is to be done in phases or of any portion of the Work that the Owner has agreed to accept separately on or after the established dates.

- 5.7 The Owner has determined that the design and construction of the Project will be done in phases. The following provisions apply to phasing:
- 5.7.1 The Owner will consult with the CMAR and the Design Professional as to (i) the number of phases, (ii) the content of each phase, (iii) the timing and scheduling of design and construction of each phase (including, among other matters, the Commencement Date, the Substantial Completion Date and the Final Completion Date of each phase), (iv) the coordination among the phases, and (v) any other matters relating to phasing. The Owner, the CMAR and the DP shall use their good faith best efforts to reach a consensus on all such matters. As to any such matters on which a consensus is not reached, the Owner shall make a reasonable final determination.
- 5.7.2 The CMAR's Pre-Construction Phase Services Fee and Construction Phase Services Fee and the Contract Time(s) take into account phasing and the greater scope of services required by phasing.
- 5.7.3 Some of the provisions of the Contract Documents specifically deal with phasing. Other provisions do not specifically deal with phasing. If the design and construction of the Project are to be done in phases, all the provisions of the Contract Documents shall be reasonably construed and interpreted to cover phasing of the design and construction.

ARTICLE 6

CMAR Fees and Guaranteed Maximum Price

- 6.1 Owner shall pay CMAR a fee for pre-construction phase services based on Proposal and Scope of Work dated INSERT DATE.
- 6.2 The process for setting the Guaranteed Maximum Price (defined in **Section 1.2** of the General Conditions) is set forth in **Section 2.2** of the General Conditions. The GMP will be the Guaranteed Maximum Price for the entire Work to be provided by CMAR under this Agreement. No construction Work shall commence until Owner has approved in writing a GMP for the entire Scope of Work to be performed within the GMP. Unless otherwise provided in the Contract Documents, CMAR's GMP is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements and all fees, general conditions, bonds and insurance.
- 6.3 If the Guaranteed Maximum Price requires an adjustment due to changes in the construction Work, the cost of such changes shall be priced under **Section 10.4** of the General Conditions.
- 6.4 For agreed-to Owner-caused construction delays CMAR will provide all the necessary extended general conditions for the daily sum of **\$ 1,000.00 (One Thousand Dollars)**.

ARTICLE 7
Procedure for Payment

7.1 Progress Payments.

7.1.1 For pre-construction phase services, CMAR shall submit to Owner on the last business day of each month CMAR's application for payment based on the percentage completed for each preconstruction phase design phase as agreed to by the Owner. The CMAR's pre-construction phase fee is broken down among the design phases as follows:

<u>Design Development Subphase</u>	<u>Allocated Portion of Pre-Construction Phase Fee</u>
Program Development	\$00.00
Schematic Design	\$
Design Development	\$
Construction Documents	\$
<u>Bid Award</u>	
Total Lump Sum Fee	\$

7.1.2 Payment for CMAR's construction phase services shall be made in accordance with **Article 7** of the General Conditions.

7.2 Interest. Payments due and unpaid by Owner to CMAR, whether progress payments or final payment, shall bear interest as provided by law unless payment is withheld by Owner for non-performance by CMAR.

7.3 Record Keeping and Finance Controls. With respect to all Work performed by CMAR, its Subcontractors and Consultants under this Agreement, CMAR, its Subcontractors and any Consultants, shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management using accounting and control systems approved by the Owner. During performance of the Work and for five (5) years after final payment for the entire Work (even if the Work is done in phases or portions), the CMAR shall retain and shall also require all Subcontractors and any Consultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the CMAR at any time during or after the Work as the Owner may request. The CMAR shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or any Consultant payment applications or invoices and such Subcontractor's or any Consultant's progress payment checks. The requirements of this **Section 7.3** shall be included in all contracts between the CMAR and its Subcontractors and any Consultants employed by the CMAR.

ARTICLE 8
Termination for Convenience

8.1 Upon ten (10) days' written notice to **CMAR**, **Owner** may, for its convenience and without cause, elect to terminate this Agreement. In such event, **Owner** shall pay **CMAR** for any pre-construction phase and construction phase Work executed, and for cost or expense necessarily incurred in connection with any construction Work completed to date, and reasonable costs or expenses attributable to such termination, including demobilization costs and the prorated portion of the Fee based upon the Work completed.

ARTICLE 9
Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates INSERT NAME ; INSERT ADDRESS
as its Senior Representative ("**Owner's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 11.2.2** of the General Conditions.

9.1.2 Owner designates INSERT NAME
And

INSERT NAME
INSERT ADDRESS

as its representative ("**Owner's Representative**"), which individual has the authority and responsibility set forth in the Contract Documents.

9.2 CMAR's Representatives.

9.2.1 CMAR designates INSERT NAME, Project Director; INSERT ADDRESS
as its Senior Representative ("**CMAR's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 11.2.2** of the General Conditions.

9.2.2 CMAR designates INSERT NAME, Project Manager
And

INSERT NAME, Preconstruction
Manager; INSERT ADDRESS

as its representative ("**CMAR's Representative**") which individual has the authority and responsibility set forth in the Contract Documents.

9.2.3 CMAR designates INSERT NAME, Superintendent; ADDRESS;

as its construction superintendent ("**Construction Superintendent**"), which individual has the authority and responsibility set forth in the Contract Documents.

9.2.4 CMAR's representatives and Construction Superintendent, as approved by the Owner, shall not be replaced without the Owner's prior written approval.

ARTICLE 10
Bonds and Insurance

10.1 Insurance. CMAR shall procure the insurance coverages required by **Article 6** of the General Conditions. Insurance certificates shall be submitted to Owner at the times specified in **Section 6.2** of the General Conditions.

10.2 Bonds. CMAR shall provide performance and payment bonds as provided in **Section 6.1** of the General Conditions. The bonds shall be in the forms in **Exhibit A** to the General Conditions.

ARTICLE 11
Other Provisions

- 11.1 Any Consultants and Subcontractors submitted and approved as pre-qualified by the Owner shall not be replaced without the Owner's prior written approval. Any additional costs due to an approved change of Subcontractor or Consultant without a change in the scope of Work shall not be the Owner's responsibility and will not increase the Guaranteed Maximum Price. CMAR represents that it has the necessary financial resources to fulfill its obligations under the Contract Documents and has the necessary corporate approvals to execute this Agreement and perform the work as described herein.

ARTICLE 12
Employment

- 12.1 In connection with the performance of work under this contract, the CMAR agrees to observe all applicable Arizona and Federal Laws including A.R.S. 41-4401.

ARTICLE 13
Additional Approvals of Governing Board and Others

- 13.1 The Project has been given an initial approval by the LHUSD Governing Board. This approval permits the Owner to proceed through a portion of the design phase of the Project. A second Governing Board approval will be required to authorize completion of the design phase. A third Governing Board approval is required before Owner may legally obligate itself to construct and pay for the construction of the Project. In addition to the Governing Board approvals, approvals by legislative bodies or others may also be required. Anything in the Contract Documents to the contrary notwithstanding, any obligation of Owner under the Contract Documents to complete the design phase and to construct and pay for construction of the Project is subject to the above-described approvals.

ARTICLE 14
Special Provisions

- 14.1 **Offshore Performance**
Due to security and identity protection concerns, direct services under any subsequent contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the school district(s) or charter school(s) or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.
- 14.2 **Contractor's Employment Eligibility**
By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

The District may request verification of compliance from any contractor or subcontractor performing work under this contract. The District reserves the right to confirm compliance in accordance with applicable laws.

Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

14.3 Israeli Boycott
Per A.R.S. 35-393, Contractor certifies that for the duration of the contract, they will not engage in a boycott of Israel.

14.4 Fingerprint Checks
If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy.

The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or Offerors and their employees for which fingerprints are submitted to the District. Contractor, subcontractors, Offerors and their employees shall not provide services on school district properties until authorized by the District.

Additionally, contractor shall comply with the governing body fingerprinting policies of each individual School District.

Registered Sex Offender Restriction

No employee of the vendor, or a subcontractor of the vendor, who has been adjudicated to be a registered sex offender, may perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. A violation of this condition may result in the cancellation of this contract at the District's discretion.

CMAR:

INSERT NAME

OWNER:

LHUSD GOVERNING BOARD

For and on behalf
**LAKE HAVASU UNIFIED
SCHOOL DISTRICT #1**

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date:

Date: