

ATTACHMENT IV

**MASTER GENERAL CONDITIONS
(CONSTRUCTION MANAGER AT RISK)**

Date Issued: INSERT DATE

School District Project No.: BONDFY21Oct20

School District Project Name: RECONFIGURATION OF MOUNTAIN VISTA SCHOOL
SITE CIRCULATION AND PARKNG AREAS; SITE
DRAINAGE IMPROVEMENTS; ADA ACCESSIBILTY
UPGRADES; AND OTHER SITE WORK AS
DETERMINED BY DISTRICT.

OWNER

ORACLE SCHOOL DISTRICT GOVERNING BOARD

for and on behalf of

ORACLE SCHOOL DISTRICT #2

2618 West El Paseo
Oracle, AZ 85623-1720

CMAR

ENTER NAME AND ADDRESS

- **CONSTRUCTION MANAGER AT RISK (CMAR)**
 - **GENERAL CONDITIONS**
-

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ARTICLE 1
GENERAL ARTICLES

1.1 MUTUAL OBLIGATIONS.

1.1.1 Owner and CMAR commit, at all times, to cooperate fully with each other and with the DP and others involved in the Project and to proceed on the basis of trust, confidence, and good faith to permit each party to this Agreement to realize the benefits afforded under the Contract Documents, which benefits include the satisfactory and timely completion of the Project and performance of all obligations required by the Contract Documents.

1.2 BASIC DEFINITIONS

1.2.1 “**Contract Documents**” are those documents noted under **Article 2** of Agreement between Owner and CMAR, as they may be amended, modified, extended and renewed from time to time **in writing**. As used in the Contract Documents, the phrase, “**this Agreement**”, means the agreement between Owner and CMAR under the Contract Documents.

1.2.2 “**Construction Documents**” are the plans and specifications prepared by the DP for the Project, approved by the Owner, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. All amendments and modifications to the Construction Documents must be approved by the Owner in writing.

1.2.3 “**Cost of the Work**” consists of those items of the entire Work, which are paid for by the Owner to the CMAR and consists of those categories of costs set forth as allowable on **Exhibit B and Exhibit C**. “**Actual Cost of the Work**” is the aggregate amount of costs for the Work in those categories of costs set forth in **Exhibit C** chargeable to the Owner under the provisions of the Contract Documents, (i) provided that the Actual Cost of the Work to be paid by Owner shall not exceed the final Guaranteed Maximum Price set forth in the **Final** GMP Setting Modification under **Section 2.2.2.5**, as such GMP may be modified in accordance with all the Contract Documents and as specifically approved by the Oracle School District Governing Board on behalf of the owner.

1.2.4 “**Open Book Cost**” is the Actual Cost of the Work as compiled and recorded in accordance with the provisions of **Subsection 2.1.13** of these **General Conditions**.

1.2.5 “**CMAR**” means the CMAR and all persons and entities identified as members of the CMAR Project Team in the CMAR’s response to the Owner’s RFQ dated (August 21, 2020), with amendments and any substitutes permitted under the terms of the RFQ and these General Conditions and the Standard Form of Agreement Between Owner and Construction Manager at Risk. The CMAR participates in the pre-construction phase by evaluating costs constructability, schedule, implications of alternate designs and systems and materials during and after design of the Project. During construction, the CMAR assumes all risk for price and schedule under the Final GMP Setting Modification under **Section 2.2.2.5**.

1.2.6 “**Day**” and “**Days**” mean calendar days, unless specifically provided otherwise. If a specific day or a period is provided for an action and the specific day or the last day of the period falls on a Saturday, a Sunday or a Federal, State of Arizona or Owner holiday, the day shall be the next following day that is not a Saturday, Sunday or Federal, State of Arizona or Owner holiday.

- 1.2.7 “**Design Professional (DP)**” is a representative of the Owner as provided in the Contract Documents whose agreement is with the Owner and who is a qualified DP properly licensed in the State of Arizona to furnish design and construction administration services.
- 1.2.8 “**Design Submission Documents**” consist of the drawings and specifications prepared at specific phases of the design effort during the pre-construction phase by the DP (including Program Development documents, Schematic Design documents, Design Development documents, and Construction Documents), estimates of Probable Construction Cost prepared by the DP and estimates of Construction Costs and other documents prepared by the CMAR that are submitted for Owner’s approval for each phase of the Project design.
- 1.2.9 “**Guaranteed Maximum Price**” or “**GMP**” is the amount that the CMAR guarantees (the sum of the Cost of the Work, contingencies established, and the CMAR’s pre-construction phase fee and construction phase fee for all items in **Exhibit C**) to be the maximum amount due the CMAR for all of the Work under this Agreement, as modified from time to time by Change Orders and as otherwise modified from time to time as provided in the Contract Documents. After the interim GMP is agreed to by CMAR and Owner, each reference in this Agreement will be to the interim GMP as modified as described above. After the final GMP is agreed to by CMAR and Owner, each reference in the Contract Documents will be to the final GMP as modified as described above. All costs, which exceed the GMP and are not authorized by Change Order, are to be paid by the CMAR and not the Owner. The procedure for setting the GMP is in **Sections 2.2.2.4 and 2.2.2.5**.
- 1.2.10 “**Legal Requirements**” include all regulations, policies and practices of the Oracle School District #2 and all applicable rules, laws, codes, ordinances and regulations of any governmental or quasi-governmental entity, federal, state and local having jurisdiction over the Work, the practices involved in the Work, or any work performed.
- 1.2.11 “**Project Budget**” is the total cost to the Owner for the Project, including all sums to be paid to or for the DP, the Work, other consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, and other incidentals required to achieve Project Final Completion.
- 1.2.12 “**Project Criteria**” are developed by or for Owner to describe Owner’s program, requirements and objectives for the Project, including use, space, price, time, site, utility, parking, and expandability requirements, as well as submittal requirements and other requirements affecting CMAR’s performance of the Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by or for Owner.
- 1.2.13 “**Punch List**” are those minor items of Work identified and listed by DP and agreed to by Owner **in writing** to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.
- 1.2.14 “**Savings**” is the positive amount difference, if any, between the Guaranteed Maximum Price and the Actual Cost of the Work and shall be allocated as set forth in Article 7. Savings is determined based on the GMP as in effect on the date of Final Completion of the entire Work.

- 1.2.15 **“Site”** is the land and other areas on which the Project is located.
- 1.2.16 **“Subcontractor”** is any person or entity at any tier of relationship to CMAR who performs a part of the Work, on or off site, directly on behalf of the CMAR, including any material men, workers and suppliers, and shall include all employees, agents and authorized representatives of such persons or entities.
- 1.2.17 **“Substantial Completion”** is the date on which the construction Work, or an agreed upon phase or portion of the construction Work, is sufficiently complete, as determined by the DP’s issuance of a Certificate of Substantial Completion, so that Owner can fully occupy and utilize the Project, or an agreed upon portion or phase thereof, for the purposes for which it is intended. The following are conditions precedent for Substantial Completion. Full or partial occupancy or use of the facility by the Owner, in and of itself, shall not constitute Substantial Completion:
1. Inspection, approval and occupancy permit issued by regulatory agencies having jurisdiction and without conditions. Conditional occupancy permits do not satisfy Substantial Completion requirements.
 2. All building systems in place, functional and accepted by the consultants.
 3. HVAC system is tested and balanced with a preliminary balance report submitted to, and accepted by, the Consultant and the Owner.
 4. Facilities are able to be secured by the Owner.
 5. All landscape and site work completed.
 6. Odor and fume generating activities are complete. This includes work such as painting, staining, floor installation, etc. This also includes odor generating activity that originates in non-occupied spaces but could enter and contaminate occupied areas.
 7. Final cleaning is complete, and all construction air filters have been replaced with clean, permanent air filters.
 8. All dust generating activity within occupied spaces has been completed. This includes dust generating activity that originates in non-occupied spaces but could enter and contaminate occupied areas.
 9. Draft submittals of O & M manuals have been submitted and accepted by the Consultant and Owner, and operation and maintenance training necessary for the Owner’s personnel to maintain operation and occupancy of the facility has been completed. Contractor remains liable and responsible for any damage to systems or equipment until Owner receives this information and training.
 10. All conveying systems, mechanical, plumbing, electrical, life safety and security or other special systems and equipment are complete and operational to the extent that the Owner can safely and comfortably use and occupy the facility.
 11. Remaining punch-list items do not represent a hazard to the Owner and occupants in order for the contractor and his subcontractors to complete. Completion of punch-list items should not cause interruption or disruption

to the Owner's functions due to noise, dust, odor, etc., or they must be accomplished and completed during off-hours convenient to the Owner's operations and at no added cost to the Owner.

- 1.2.18 "**Work**" is all activities by the CMAR required to complete the Project as defined by the Project Criteria and the Contract Documents, including, without limitation, activities during the preconstruction phase and during the construction phase. The construction phase activities include procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents.
- 1.2.19 "**Final Completion**" is defined as 100% completion of all Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

1.3 MUTUAL UNDERSTANDING

Owner and CMAR agree that these provisions set forth their mutual understanding and agreement regarding the conditions or subjects addressed herein.

- 1.3.1 It is understood and agreed that Owner has hired or will hire a DP to design the Project.
- 1.3.2 CMAR understands and agrees that the design for the Project is not complete at the time this Agreement is executed and may or may not have commenced.
- 1.3.3 CMAR commits to cooperate with and assist the DP in producing a completed design for the Project that is acceptable to the Owner, all as more fully described elsewhere in the Contract Documents.
- 1.3.4 As the Design Submission Documents are completed and accepted by the Owner, they shall become part of the Contract Documents as though they were specifically set forth therein at the time of execution of this Agreement.

ARTICLE 2

CMAR'S SERVICES AND RESPONSIBILITIES

2.1 GENERAL MATTERS AS TO CMAR

- 2.1.1 CMAR's Representative shall attend all meetings and assist the Owner during the preconstruction phase consistent with these General Conditions. During the construction phase, the CMAR's Representative and Superintendent shall be at the Site at all times when work is being performed and shall have the necessary expertise and experience required to supervise the construction Work. CMAR's Representative shall communicate regularly with Owner and DP and shall be vested with the authority to act on behalf of CMAR. CMAR's Representative and CMAR's Superintendent may only be replaced with the mutual written agreement of Owner and CMAR. Notwithstanding the foregoing, the CMAR's Representative and CMAR's Superintendent will be replaced upon reasonable request of the Owner.
- 2.1.2 The CMAR shall provide Owner and DP, on a monthly basis during construction of the work, a written status report detailing the progress of the Work, including whether the Work is proceeding according to schedule. Each report shall include: An updated Critical Path Method (CPM) schedule; an updated Work cash flow Projection for the duration of the Project; copies of the CMAR's Superintendent's daily site reports made during the preceding month; identification of discrepancies, conflicts, or ambiguities existing in the Construction Documents that require

resolution; identification of any health and safety issues that have arisen in connection with the Work; and identification of other items that require resolution so as not to jeopardize CMAR's ability to complete the Work for the Guaranteed Maximum Price and within the Contract Time(s).

- 2.1.3 Within 30 days of executing this Agreement CMAR shall prepare and submit to Owner a Critical Path Method (CPM) Master Schedule for the Work including the pre-construction and construction phases. The CPM shall include two (2) weeks of Owner review time for Design Submission Documents at SD and DD phases and three (3) weeks at CD phase. Adequate time for government agency reviews and all other necessary approvals shall be included. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required and all necessary shutdowns or suspensions of Owner or separate vendor activities on the Site (if any). The schedule shall allow for multiple bid packages and phased construction if required by Owner.
- 2.1.4 The Owner, DP, and CMAR will meet after execution of this Agreement to review issues affecting the administration of the Work and to implement procedures to permit the Owner, DP, and CMAR to perform their obligations under the Contract Documents. Among other matters to be covered at this meeting, the Owner, the DP and the CMAR will work out procedures for efficient interaction among them during the pre-construction phase of the Work so that each of the DP, the CMAR and the Owner can perform efficiently and in a cooperative and mutually supportive manner the activities, functions and obligations contemplated by this Agreement and the DP's contract with the Owner. Among other subjects to be covered by the procedures will be:
- (i) Arrangements for collaboration between the DP and the CMAR in preparing Design Submission Documents for the Program Development, Schematic Design, Design Development and Construction Documents sub-phases and in submitting each set of Design Submission Documents to the Owner for review and for comments by the Owner and group discussions by DP, CMAR and Owner of the Design Submission Documents, which include, without limitation, the Program Development documents, the Schematic Design documents, the Design Development documents, the Construction Documents, the DP's estimates of Probable Construction Costs and the CMAR's estimates of Construction Costs.
 - (ii) Arrangements that encourage frequent informal interaction among the DP, the Owner and the CMAR during the pre-construction phase, especially between submissions of Design Submission Documents under item (i), including among other activities, the DP asking constructability or other questions to the CMAR and otherwise obtaining the benefit of the CMAR's construction knowledge and experience and the DP using that information in its design work on the Project.
 - (iii) A schedule for the activities of the CMAR, the Owner and the During the pre-construction phase.

In addition, at the initial meeting, the Owner and the CMAR with assistance from the DP will develop the procedures for pre-qualification of Subcontractors to bid on the bid packages under **Section 2.2.4**. Among other items included in the pre-qualification procedures will be a requirement that the CMAR pre-qualify at least three (3) Subcontractors in each trade, a requirement that the CMAR submit to Owner a list of proposed Subcontractors together with such information about the

qualifications of each Subcontractor as Owner may reasonably request and a right by Owner to reject one or more proposed Subcontractors, provided that Owner must be reasonable in rejecting a proposed Subcontractor.

If the Owner elects “**partnering**” for the Project, another subject to be covered in the initial meeting will be development of partnering procedures for the pre-construction phase and the construction phase of the Project. Partnering is a mutual effort by all the parties involved in a Project to cooperate and coordinate efforts in order to achieve the final result. Partnering requires that all parties use their particular expertise for the mutual benefit of all, rather than for the benefit of the one. Partnering requires flexibility, the ability to appreciate the positions of the other parties and to make compromises for the benefit of all. Partnering will be implemented by the utilization of a formal partnering process developed as described above and presented in a separate workshop attended by the CMAR, the Owner, the DP and their key participants. Follow up sessions will occur every three (3) months or as mutually agreed to ensure that all commitments are updated and being followed by all parties. **The cost of this partnering effort during the pre-construction phase and the construction phase will be shared equally by the CMAR, Owner, and DP.**

At the commencement of the construction phase of the Work, Owner, CMAR and the DP will have another meeting to review partnering during the construction phase and to establish procedures for the construction phase of the Work, including, among other matters, handling of submittals and Owner Site activities schedules. In addition, Owner, CMAR and DP will discuss how to implement the concepts set forth in **Section 2.5.8.3**.

- 2.1.5 The CMAR shall cooperate fully with the Owner and DP in the design and construction and keep the Work within the applicable portions of the Owner’s Project Budget and within the schedule limitations.
- 2.1.6 The CMAR understands the relationship of trust and confidence established between it and the Owner and accepts those responsibilities as described in this Agreement. The CMAR covenants with the Owner to furnish its best skill and judgment and to cooperate with the DP in furthering the interests of the Owner. The CMAR agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the Work in an expeditious and economical manner consistent with the interest of the Owner.
- 2.1.7 The CMAR, the Owner, and the DP, called the “**Construction Team**”, shall cooperatively work together during all phases of the Project in which they are involved to achieve timely completion of the Project within Owner’s Project Budget. The CMAR shall provide leadership to the Construction Team during the pre-construction phase for all cost, schedule, or alternative systems issues and on all matters relating to construction. The DP shall record and distribute minutes of each meeting.
- 2.1.8 The Contract Documents shall not be deemed to create any contractual relationship between the DP and the CMAR or any separate contractors, subcontractors of any tier or material men or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the Owner, the DP or CMAR which does not otherwise exist without regard to the Contract Documents.
- 2.1.9 The initial Work of the CMAR shall consist of its services in connection with the pre-construction phase. The pre-construction phase of the Work shall proceed in parallel with and simultaneous with the Program Development, Schematic Design,

Design Development, and Construction Documents sub-phases of the DP's services. CMAR shall prepare detailed elemental systems and CSI- formatted estimates of Construction Costs similar to **Exhibit B** format to be included as part of each set of Design Submission Documents to verify the Project is within the applicable portions of Owner's Project Budget. Unless otherwise provided elsewhere in the Contract Documents, the CMAR shall provide a Guaranteed Maximum Price (**GMP**) (as outlined in **Section 2.2**) at the end of the Design Development sub-phase. As the scope of Work is further defined in the pre-construction phase and costs are established for the construction Work, the parties contemplate that the scope of the construction Work to be performed by the CMAR may be adjusted by written modification of this Agreement or Change Order to this Agreement. Any such modification or Change Order will add to the Agreement any work contained within any Design Submission Documents that is not within the original scope of the construction Work to be performed by the CMAR. The Guaranteed Maximum Price and Contract Time(s) will be adjusted, as may be necessary, due to such change or amendment.

- 2.1.10 Subject to any exculpatory provisions of the General Conditions, execution of this Agreement by the CMAR is a representation that the CMAR has visited the Site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Owner's Project Criteria.
- 2.1.11 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents but necessary for the proper completion of the Work will be included unless it is inconsistent with the Contract Documents and is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations, which have well known technical or trade meanings, are used in the Contract Documents in accordance with such recognized meanings.
- 2.1.12 The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not control the CMAR in dividing the construction Work among Subcontractors or in establishing the extent of the construction Work to be performed by any trade.
- 2.1.13 **Open Book Cost**
With respect to all Work performed by the CMAR, its Subcontractors and Consultants under this Agreement, CMAR, its Subcontractors and 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 the performance of the Work and for five (5) years after Final Payment, the CMAR shall retain and shall also require all Subcontractors and Consultants to retain for review and audit, or both, 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 matters relating 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 the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant's progress payment

checks. The requirements of this Section shall be included in all contracts between the CMAR and its Subcontractors and Consultants. The Owner may exercise its rights under this Section as often as reasonably necessary in the Owner's sole judgment to assure the Owner has a complete and accurate understanding of all Project costs.

2.2 PRE-CONSTRUCTION SERVICES

2.2.1 CONSULTATION DURING PROJECT DEVELOPMENT

CMAR pre-construction phase services shall include, among the activities provided for in the Construction Documents: team building, and, when requested by the Owner, partnering; management planning; value engineering; alternative building systems and materials analysis; payback, feasibility and cost-benefit analysis; constructability reviews; cash flow Projections; estimating Construction Costs; development of the Guaranteed Maximum Price; and bid package strategy. These services shall include, but not be limited to, review of conceptual design; advice regarding use of the Site and advice regarding Site improvements; selection of materials, building systems and equipment; and recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction. The Proposal Letter shall determine the scope of work and fees in specificity regarding any exclusions. In providing such pre-construction services, CMAR does not assume any responsibility for design errors, omissions or inconsistencies.

2.2.2 BUDGETING AND GUARANTEED MAXIMUM PRICE

2.2.2.1 The CMAR shall provide pre-construction phase services for the Pre-construction Phase Services Fee, which will be earned based upon the amount of preconstruction phase design development work completed. This fee shall be payable monthly as a percentage of completion of the pre-construction phase services. The construction phase services will be provided based upon an Open Book Cost of the construction Work as listed in Exhibit C included in the Final GMP Setting Modification (defined in **Section 2.2.2.5** below), plus the Construction Phase Services Fee identified in the completed Exhibit C also included in the Final GMP Setting Modification (defined in **Section 2.2.2.5** below). In no event, shall the aggregate payments by Owner to Contractor for all pre-construction phase and construction phase Work exceed the Guaranteed Maximum Price.

2.2.2.2 The CMAR shall assist the DP in evaluating the Owner's preliminary Project Budget. The Owner shall furnish the CMAR the amount within the Owner's Project Budget available for the construction Work. The CMAR's estimates of Construction Costs and the construction Work portion of the CMAR's proposed Guaranteed Maximum Price shall not exceed this amount.

2.2.2.3 The amount within the Owner's Project Budget available for construction Work may be revised only by an Owner approved written modification of this Agreement or a Change Order.

2.2.2.4 As determined by the Owner and the CMAR, and no later than the conclusion of the Design Development sub-phase the CMAR shall propose a Guaranteed Maximum Price by submitting a completed copy of **Exhibit C**, a cover letter executed on behalf of CMAR proposing the GMP to Owner, a list of the drawings and specifications used by CMAR in

preparing the proposed GMP and a list of clarifications and assumptions made by the CMAR in preparing the proposed GMP to supplement the information in the drawings and specifications. CMAR and Owner acknowledge that the drawings and specifications will be subject to further development that is consistent with the then existing drawings and specifications and inferable therefrom. Therefore, in determining the proposed GMP the CMAR shall take into account such further development as is consistent with the drawings and specifications and is reasonably inferable therefrom. Although the Owner and the DP may discuss the two lists with the CMAR in evaluating the proposed GMP, the accuracy and completeness of the two lists are the sole responsibility of the CMAR, and neither the Owner nor the DP shall have any responsibility to review the lists or to advise the CMAR of any errors or omissions. The Owner will, at its sole discretion, have the option to accept this GMP in writing, in which event the proposed GMP in the completed **Exhibit C** will become the interim GMP and the Owner's written acceptance will be a written modification and become part of this Agreement ("**Interim GMP Setting Modification**"), or to terminate this Agreement for convenience, per **Section 12.1.1**, with payment to CMAR for that portion of the Preconstruction Phase Services Fee earned. The interim GMP will include a "bidding contingency" in an amount agreed by CMAR and Owner and included in the Interim GMP Setting Modification.

2.2.2.5 No construction Work shall commence until a Guaranteed Maximum Price for the Scope of Work to be performed within the GMP is established. The final GMP will be determined as follows. The final GMP under (i) or (ii) will be modified as provided in this Agreement:

- (i) If the construction Work is not done in phases, the final Guaranteed Maximum Price for the entire Work will be established after acceptance by the CMAR of Subcontractor bids for the construction Work by the Owner and the CMAR each executing a written approval of a completed form of **Exhibit C** containing the final Guaranteed Maximum Price, which written approval and final, completed form of **Exhibit C** will be a written modification and part of this Agreement ("**Final GMP Setting Modification**") and will supersede the Interim GMP Setting Modification. The final Guaranteed Maximum Price and the completed form of **Exhibit C** to be included in the Final GMP Setting Modification shall be determined as follows:
 - (A) Start with the completed form of **Exhibit C** attached to the Interim GMP Setting Modification.
 - (B) To the extent that the aggregate amount included in the Subcontractor bids accepted by CMAR relating to any line item in the interim GMP is less than the amount in the line item in the interim GMP, move the excess amount from the line item to the "construction contingency".
 - (C) To the extent that the aggregate amount included in the Subcontractor bids accepted by CMAR relating to any line item in the interim GMP is more than the amount in the line item in the interim GMP, move an amount from the "bidding contingency" to the line item sufficient to cover the deficiency in the line item to the extent the amount is available in the "bidding contingency".

- (D) The revised **Exhibit C** is the copy of **Exhibit C** to be attached to the Final GMP Setting Modification and the amount in the revised **Exhibit C** is the final GMP; or
- (ii) If the construction Work is to be done in phases:
 - (A) The Interim GMP Setting Modification will also be the Final GMP Setting Modification.
 - (B) The final Guaranteed Maximum Price for the Project will be the Guaranteed Maximum Price set forth in the Interim GMP Setting Modification and in a form, similar to Exhibit C attached thereto. Such final GMP shall be modified during the construction phase of the Work as provided in **Section 7.14**.
 - (C) There will be no Guaranteed Maximum Price for any phase of the construction Work.
 - (D) When referred to in other provisions in this Agreement, the date of agreement by Owner and CMAR on the final GMP will be the date of the Interim GMP Setting Modification.
 - (E) Notwithstanding the allocation of the final GMP among the phases, CMAR shall have sole responsibility for completing the entire construction Work for all phases within the Contract Time(s) for the entire Construction Work and for the final Guaranteed Maximum Price and CMAR shall absorb any costs in excess of the final Guaranteed Maximum Price.

2.2.2.6 Construction Contingency – The GMP will contain a separately identified contingency amount (the “Construction Contingency”). The Construction Contingency is not allocated to a particular item of the Cost of the Project, and is established for the CMAR’s use (only with the Owner’s approval) as may be required for costs incurred in the Work from unforeseen causes or details which could have not been anticipated by the CMAR at the time of the Owner’s approval of the GMP. Such unanticipated causes or details include, but are not limited to, refinement of details of design within the scope or standards, quality and quantities which are reasonably inferable from the GMP documents, the correction of minor defects not relating to design, delays in receipt of materials not due to the fault of the CMAR, corrections in the Work provided the CMAR has exhausted all reasonable means to obtain correction of same from the responsible Subcontractor, labor and material overruns, and additional costs relating to Subcontractor defaults. The CMAR may utilize the Construction Contingency for items within the Cost of the Project without the necessity of a Change Order, without constituting a Change in the Project, and without resulting in any change in the GMP. Any and all use of the Construction Contingency must be approved in writing by the Owner.

2.2.3 COST ESTIMATES

2.2.3.1 Construction Costs: All estimates of Construction Costs and the Schedule of Values shall include without duplication:

- .1 All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and

- services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work,
- .2 The cost of labor and materials furnished by the Owner calculated at current market rates, including a reasonable allowance for overhead and profit,
 - .3 The cost of any Owner equipment contract to be assigned by Owner to CMAR or labor for installation for equipment separately provided by Owner which has been designed, specified, selected or specifically provided for by the DP.
 - .4 The Construction Phase Services Fee;
 - .5 All bond and insurance premiums;
 - .6 All applicable taxes; and
 - .7 A contingency.
- 2.2.3.2 The estimates of Construction Costs shall not include the CMAR's Pre-Construction Phase Services Fee, sums due the DP, the costs of land, right of way, financing or other costs, which are the responsibility of the Owner.
- 2.2.3.3 Estimates of Construction Costs
The CMAR, in preparing its estimates of Construction Costs and providing the Guaranteed Maximum Price, shall consult with the DP to determine what materials, equipment, component systems and types of construction are to be included in the Construction Documents and to make recommendations for reasonable adjustments in the scope of the construction Work.
- 2.2.3.4. Estimates of Construction Costs
The CMAR shall prepare an estimate of Construction Costs as soon as major Project requirements have been identified and update the estimate no less frequently than bimonthly until completion of Schematic Design Documents. Within two weeks of CMAR's receipt of completed Schematic Design Documents, the CMAR shall prepare a quantity take-off estimate of Construction Costs based on both elemental building systems and C.S.I. formats. The CMAR shall update the estimate no less frequently than bimonthly. During the Design Development Phase, the CMAR shall prepare a final estimate of Construction Costs preliminary to providing the proposed Guaranteed Maximum Price under **Section 2.2.2.4**. All estimates of Construction Costs shall make allowance for bidding and price escalation by including a "contingency". During the Construction Documents Phase, the CMAR shall continually monitor the cost estimates and develop cost estimates to help assure that the cost of the construction Work remains within the applicable portion of the Project Budget or Guaranteed Maximum Price.
- 2.2.3.5 Estimates shall be independently prepared and shall be based on quantitative takeoffs whenever possible and shall be sustained in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems, and bid packages. Lump sum estimates will not be acceptable.
- 2.2.3.6 CMAR shall submit all cost estimates to the DP and Owner for review and verification. If the DP and CMAR cannot agree on any individual cost items, then the highest identified cost will be utilized and noted as such by the CMAR in the submission of the cost estimate to the Owner as part of the Design Submittal.

- 2.2.3.7 After review of the cost estimate by the DP, the CMAR shall notify the Owner if it appears that the estimate of Construction Costs will exceed the applicable portion of the Project Budget or Guaranteed Maximum Price as may be applicable, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the Owner, and make reasonable recommendations for corrective action consistent with the Project Budget or Guaranteed Maximum Price, as may be applicable. All costs to correct Design Submission Documents to bring the estimate of Construction Costs back within the applicable portion of the Project Budget or the Guaranteed Maximum Price shall be borne by the DP and all re-estimating costs shall be borne by the CMAR.
- 2.2.3.8 DP/CMAR Cooperation: The DP, by the terms of its agreement with the Owner, is obligated to provide reasonable cooperation to the CMAR in the development of estimates of Construction Costs and the Guaranteed Maximum Price. Conversely, the CMAR shall provide reasonable cooperation to the DP in the development of the DP's estimates of Probable Construction Cost. DP and CMAR shall reconcile their respective cost estimates not later than (7) days after receipt by the DP of CMAR's cost estimate or receipt by the CMAR of DP's cost estimate to assure the Owner that the CMAR estimated Construction Costs and the DP estimate of Probable Construction Costs are within the applicable portion of the Project Budget or the Guaranteed Maximum Price.

2.2.4 OTHER PRE-CONSTRUCTION SERVICES

- 2.2.4.1 The CMAR shall review the drawings and specifications as they are being prepared and recommend alternative solutions whenever design elements or details affect construction feasibility, schedules or cost; however, nothing contained in this **Section 2.2.4** shall be construed to require the CMAR to provide design services.
- 2.2.4.2 The CMAR shall make recommendations to the Owner and the DP regarding how to divide the work contained in the drawings and specifications to facilitate the bidding and awarding of subcontracts and to allow for phased construction, if applicable. The CMAR's recommendation shall take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.
- 2.2.4.3 In cooperation with the DP, CMAR shall provide a written constructability review of all drawings and specifications relating to the Program Development, Schematic Design, Design Development and Construction Documents sub-phases, in a form acceptable to Owner. This constructability review shall
- (1) minimize areas of conflict, errors, omissions, and overlapping of Work to be performed by Subcontractors,
 - (2) confirm that the Scope of Work has been included in the drawings,
 - (3) minimize costs and value engineer where appropriate, and
 - (4) allow for phased bid packages and construction, as required by the Owner.
- 2.2.4.4 Meeting Attendance
The CMAR shall attend all regular meetings with the Owner and DP and such additional meetings as the Owner may request. All regular meetings shall be scheduled by the DP with the agreement of the CMAR and

approval of the Owner. All additional meetings shall be scheduled by the Owner. The DP shall take and distribute minutes of each regular design phase meeting and each additional design phase meeting.

2.2.4.5 Construction Costs Management

The CMAR shall implement a cost forecasting, monitoring and control program for the Work. Cost analyses shall include analyses of all trades and construction Work components making a significant contribution to total Construction Costs. The program shall include development of a cost model, monitoring the design process and periodic cost reviews to identify variances from the cost model. Variances shall be provided to the Owner and DP in a report highlighting the variance and recommending corrective action to be taken.

2.2.4.6 The CMAR shall investigate and recommend materials and equipment that could be purchased directly by the Owner; consider long lead time procurement and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the DP regarding the schedule for preparation of Construction Documents; and upon approval of the direct purchases by Owner expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.

2.2.4.7 The CMAR shall: pre-qualify Subcontractors to bid on bid packages in accordance with the pre-qualification procedures established under **Section 2.1.4**; with the assistance of Owner and the DP, prepare the bid packages, including, among other items, the necessary bidding information and bidding forms; develop subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. The CMAR shall review all potential Subcontractors with the Owner and DP and obtain Owner's approval of the pre-qualification of each Subcontractor. If the CMAR becomes aware prior to any bid date that less than three (3) pre-qualified Subcontractors plan to bid any portion of any bid package or that anticipated bids from previously pre-qualified subcontractors are likely to exceed the current Schedule of Values or estimate of Construction Costs for the entire construction Work or for the phase of the construction Work included in the bid package, the CMAR shall promptly notify the Owner. CMAR must make a reasonable effort to obtain a minimum of three (3) bids from pre-qualified Subcontractors for each bid package.

2.2.4.8 The bid packages shall contain clear instructions that all bids are to be addressed to the CMAR and not to the Owner. The CMAR shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Owner and DP concerning which bids from pre-qualified subcontractors the CMAR proposes to accept. The Owner and DP shall be notified of the time and place of all bid openings and shall be permitted to attend such openings with their representatives and guests. If the CMAR proposes to accept a bid other than a low bid, the CMAR shall justify such action in writing to Owner prior to accepting such bid. CMAR shall not accept a bid other than the low bid until after delivering the justification to Owner and written approval by the Owner, with no increase in the GMP.

2.2.4.9 The CMAR shall provide the requirements and assignment of

responsibilities for: safety precautions and programs as required for the execution of the construction Work; temporary Project facilities; and for equipment, materials, and services for common use of Subcontractors. CMAR shall verify that the foregoing is included in the Construction Documents.

2.3 LEGAL REQUIREMENTS

- 2.3.1 CMAR shall perform all Work in accordance with all applicable Legal Requirements and shall provide all notices applicable to the Work.
- 2.3.2 The Guaranteed Maximum Price or Contract Time(s) of performance or both shall be adjusted to compensate CMAR for any unforeseen changes in the Legal Requirements affecting the performance of the Work.

2.4 GOVERNMENT APPROVALS AND PERMITS

- 2.4.1 Unless otherwise specifically provided in the Contract Documents, CMAR shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.5 CMAR'S CONSTRUCTION PHASE SERVICES

- 2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, CMAR's construction phase services shall include, without limitation: team management and coordination, scheduling, cost controls and change order management, submittal process management, subcontracting, field management, safety program, close-out process, and warranty period services. This shall include providing through itself or its Subcontractors all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CMAR to complete all construction Work in accordance with the Construction Documents.
- 2.5.2 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.5.3 CMAR shall only employ Subcontractors who are properly licensed and fully committed and competent with sufficient resources and manpower to perform the construction Work consistent with the Construction Documents and with the same degree of skill, quality and competence as CMAR.
- 2.5.4 CMAR is fully responsible for its Subcontractors' work and any acts and omissions in connection with the performance of its Subcontractors' work. Nothing in the Contract Documents is intended or shall be deemed to create any legal or contractual relationship between Owner and a Subcontractor. In addition, nothing in the Contract Documents is intended or shall be deemed to create any third-party beneficiary rights.
- 2.5.5 CMAR is responsible for coordinating the activities of all Subcontractors. If Owner is performing other work with separate contractors under its control, CMAR agrees to cooperate and coordinate its work with the work of Owner's separate contractors so that the Project and any separate project(s) on which the separate contractors are working can be completed in an orderly and coordinated manner reasonably

free of significant disruption to any party. In this regard:

- 2.5.5.1 The Owner reserves the right to award other contracts related to the Project, or to perform certain work itself. The Owner also reserves the right to award other contracts unrelated to the Project but involving work in the vicinity of the Project or to perform unrelated work itself. Such other work may or may not be known to the Owner or disclosed to the CMAR prior to the date of this Agreement. The Contractor shall afford the Owner and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly coordinate its Work with theirs in such manner as the Owner may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the Site and their work.
- 2.5.5.2 Should the CMAR sustain any damage through any act or omission of any other contractor, CMAR shall not have claim or cause of action against the Owner for such damage and hereby waives any such claim. The CMAR does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall include, but not be limited to, any reasonable delay by any such other contractors, whether due to negligence, gross negligence, inadvertence, or any other cause.
- 2.5.5.3 Should the CMAR cause damage to the work or property of any other contractor or of the Owner, the CMAR shall upon receiving due notice promptly attempt to settle with such other contractor or the Owner by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused by the CMAR, the Owner shall notify the CMAR who, at Owner's option, shall defend and indemnify owner for such proceedings and pay the costs of Owner defending such proceedings, and if any judgment or award against the Owner arises therefrom the CMAR shall pay or satisfy it in its entirety to the extent such damage is caused by CMAR and shall reimburse the Owner for all attorney's fees and court or other costs which the Owner has incurred.
- 2.5.6 CMAR shall keep the Site free from debris, trash and construction wastes to permit CMAR to perform its construction services efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage/staging areas. Upon Substantial Completion of the entire Work or a portion of the Work or, if the construction Work is divided into phases, a phase of the Work, CMAR shall remove all debris, materials, wastes, equipment, machinery and tools from the Work to permit Owner to occupy the entire Work or a portion or phase of the Work for the use in which it is intended.
- 2.5.7 Any changes affecting previously approved Work shall require prior written approval of the Owner.
- 2.5.8 CONTROL OF THE WORK
 - 2.5.8.1 The CMAR shall supervise and direct the work of its employees and Subcontractors and coordinate the Work with the activities and responsibilities of the Owner and the DP to complete the Work in accordance with the Contract Documents.

2.5.8.2 The CMAR shall establish an on-site organization and lines of authority in order to carry out the overall plans for completion of the Work.

2.5.8.3 The CMAR shall schedule and conduct weekly progress meetings at which the Owner, DP, and CMAR can discuss jointly such matters as procedures, progress, actual problems, potential problems, fixes to and limits on actual problems and ways to avoid, limit or fix potential problems. Owner, DP and CMAR will contribute their good faith efforts in such discussions to finding ways (i) to complete the Project within the Contract Time(s) and within the Guaranteed Maximum Price, (ii) to limit and fix actual problems, and (iii) to avoid, limit or fix potential problems. None of such discussions shall affect or impair the respective rights, responsibilities and obligations of Owner and CMAR under the Contract Documents.

2.5.9 DAILY LOG

2.5.9.1 The CMAR shall maintain an accurate daily log of construction activities for each calendar day of the Contract Time, using a form approved by the DP. The CMAR shall document all activities at the Site, including:

- A. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Site, and any other weather conditions which adversely affect Work at the Site;
- B. Soil conditions which adversely affect Work at the Site;
- C. The hours of operation by CMAR and individual Subcontractor personnel;
- D. The number of CMAR and Subcontractor personnel present and working at the Site, by subcontract and trade, and updated schedule activity number.
- E. The equipment active or idle at the Site;
- F. A description of the Work being performed at the Site by updated schedule activity number.
- G. Any delays, disruptions or unusual or special occurrences at the Site;
- H. Materials received at job Site; and
- I. A list of all visitors at the Site.

2.5.9.2 The CMAR shall provide copies of and shall make available the daily logs to the Owner on a weekly basis. The daily log does not constitute written notice to the Owner when such notice is required by the Contract Documents.

2.5.10 SUPERVISION AND CONSTRUCTION PROCEDURES

2.5.10.1 The CMAR shall supervise and direct the Work, using the CMAR's best skill and attention. The CMAR shall be solely responsible for the coordination and accomplishment of all portions of the Work under the Contract Documents.

2.5.10.2 The CMAR shall be responsible to the Owner for the acts and omissions of the CMAR's employees, Subcontractors, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with the CMAR.

2.5.10.3 The CMAR shall not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities or

duties of the DP in its administration of this Agreement or by inspections, tests or approvals required or performed by persons other than the CMAR. Nothing contained in this **Section 2.5.10.3** shall preclude the CMAR from asserting any rights it may have under this Agreement in the event of unreasonable delays to the CMAR in the making of any inspections, test, approvals, or other action by the DP upon which the CMAR is dependent.

- 2.5.10.4 The CMAR shall employ a competent Construction Superintendent who is Owner-approved and necessary assistants, who shall be in attendance at the Site during the progress of the Work. The CMAR shall also employ the CMAR Representative and CMAR Senior Representative who are Owner-approved together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction. The superintendent and representatives shall not be changed except with the consent of the Owner, unless the superintendent or representative ceases to be in the employment by CMAR. The superintendent and representatives shall represent the CMAR and all communications given to either representative shall be binding on the CMAR. All oral communications shall be confirmed in writing.
- 2.5.10.5 The CMAR shall at all times enforce strict discipline and good order among its employees and its Subcontractors' employees and shall not allow employment on the Work of any unfit person or anyone not skilled in the task assigned to them.
- 2.5.10.6 The CMAR shall at all times allow the Owner, DP, or any other designated representatives access to the Work to observe progress and inspect the quality of work and conformance to the Construction Documents.
- 2.5.10.7 Any Work required to be inspected by the DP and/or the Owner prior to being covered, which is covered up without prior inspection or without prior consent of the DP and/or the Owner, must be uncovered and recovered by the CMAR, if requested by the DP or the Owner, at no cost to Owner, notwithstanding the provisions of the following Subsection.
- 2.5.10.8 CMAR shall notify the Owner and DP in writing at least 24 hours prior to the time at which the Owner or DP must be present to perform an inspection. Failure to provide such notice shall make the CMAR solely responsible for all consequences of non-inspection and any required access to the Work.

2.5.11 ADMINISTRATION

2.5.11.1 Except where expressly provided to the contrary in the Contract Documents, the CMAR's Representative shall forward all communications in writing and all documents simultaneously to the Owner's Representative and the DP's Representative as listed below:

DP's	CMAR's	Owner's
Representative:	Representative:	Representative:
Robin Shambach	ENTER NAME	Paul Hartley

2.5.12 DRAWINGS AND SPECIFICATIONS

- 2.5.12.1 The CMAR shall analyze and compare the Construction Documents in advance of beginning each phase or portion of the Work and immediately report to the DP and Owner any material error, inconsistency, conflict, ambiguity, or omission.
- 2.5.12.2 The drawings included in the Construction Documents are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Where required, the CMAR shall perform no portion of the Work without approved shop drawings, product data or samples; any Work performed in violation of this provision will be solely at the CMAR's risk regardless of DP's and/or Owner's knowledge of such Work.
- 2.5.12.3 In the event of any conflict or ambiguity the Construction Documents shall be interpreted as being complementary, requiring a complete Project or designated portion or phase thereof. Any requirement occurring in any one of the construction documents is as binding as though occurring in all Construction Documents. Generally, the specifications address quality, types of materials and contractual conditions while the drawings show placement, sizes, and fabrication details of materials. In the event of any conflict in the Construction Documents, the priorities stated below shall govern:
- A. Addenda shall govern over all other Construction Documents and subsequent addenda shall govern over prior addenda only to the extent modified.
 - B. In case of conflict between drawings and specifications, the specifications shall govern.
 - C. Conflicts within the drawings:
 - (1) Schedules, when identified as such, shall govern over all other portions of the drawings.
 - (2) More specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in **Section 2.5.12.3(C)(1)** above.
 - (3) Larger scale drawings shall govern over smaller scale drawings.
 - (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - D. Conflicts within the specifications: These General Conditions shall govern over all sections of the specifications except for specific modifications to these General Conditions that may be stated in supplementary general conditions or addenda. No other section of the specifications shall modify these General Conditions.
 - E. If provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
 - F. In the event of any conflict or ambiguity, the CMAR shall request an interpretation by the DP before performing the Work.
- 2.5.12.4 If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "**Minor detail**" shall include the concept of substantially identical components, where the

price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

2.5.13 SUBMITTALS, DRAWINGS AND SHOP DRAWINGS

- 2.5.13.1 The CMAR shall maintain at the Site, for the use of the Owner and of the DP, one copy of all drawings, specifications, bulletins, addenda, Change Orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their modifications, if any, in good order and marked daily by the CMAR to record all approved changes made during construction. All these shall be turned over to the DP by the CMAR at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the Owner.
- 2.5.13.2 The CMAR shall submit to the DP, promptly and in no event, as to cause delay in its Work or in that of any other contractor, all submittals and shop drawings as required by the Construction Documents, or as necessary to illustrate details of the Work.
- 2.5.13.3 Each submittal and shop drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the shop drawings. Each series shall be numbered consecutively for ready reference and each submittal and shop drawing shall be marked with the following information:
- A. Date of submission
 - B. Name of Project
 - C. Location of Project
 - D. Branch of Work (specification section)
 - E. Project number
 - F. Name of submitting CMAR
 - G. Name of Subcontractors
 - H. Revision number
- 2.5.13.4 All Subcontractor submittals and shop drawings shall be reviewed by the CMAR prior to being submitted to the DP and shall bear written statement by the CMAR that the submittals and shop drawings are consistent with the Contract Documents. Any submittals or shop drawings submitted without this approval will be returned for resubmission; the submittals or shop drawings will be considered as not having been submitted, and any delay caused thereby shall be the CMAR's sole responsibility. This review by CMAR of Subcontractor submittals and shop drawings shall not be construed as CMAR approval of the design therein except that it shall be a representation that the letter accompanying the submittal or shop drawings does indicate all deviations from the DP's drawings and specifications as required by **Section 2.5.13.5**.
- 2.5.13.5 The CMAR shall include with submittals and shop drawings, a letter

indicating all deviations from the DP's drawings and specifications. Failure to so notify the DP of such deviations will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the deviations are not acceptable, the CMAR must furnish the item as specified or as indicated on the drawings included in the Construction Documents.

- 2.5.13.6 It is the CMAR's obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and shop drawings shall indicate in detail all parts of an item of Work, including erection and setting instructions and engagements with work of other trades or other separate contractors.
- 2.5.13.7 By reviewing or submitting submittals and/or shop drawings, the CMAR thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each submittal and/or shop drawing with the requirements of the Work and of the Construction Documents. If any specified material item or part is not available, the CMAR shall so indicate to the DP.
- 2.5.13.8 The DP shall review and approve submittals and shop drawings and return them to the CMAR within fourteen (14) days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the CMAR must agree upon a 14-day review period for each submittal or set of shop drawings. For complex submittals, the CMAR must agree upon two 14-day review cycles. If review and approval are delayed beyond fourteen (14) days, the DP shall notify the CMAR and the Owner in writing stating the reason for the delay. Approval shall not relieve the CMAR from the responsibility for deviations from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of the Owner to affect an improvement in the Work and does not increase the Guaranteed Maximum Price or Contract Time(s). Any such modification is subject to all other provisions of the Construction Documents and is without prejudice to any and all rights under any surety bond.
- 2.5.13.9 If the DP returns a submittal or shop drawing to the CMAR with the notation "**rejected**", "**revise and resubmit**", or "**approved as noted**", the CMAR, so as not to delay the Work, shall promptly submit a submittal or shop drawing conforming to the requirements of the Construction Documents and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. Any other differences between the resubmittal and the prior submittal shall also be indicated on the shop drawing and on the resubmittal as a special note.
- 2.5.13.10 No extension of time will be granted to the CMAR because of its failure to submit submittals or shop drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the CMAR has received written approval. The CMAR shall furnish prints of its approved submittals and shop drawings to all the Subcontractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the Site.

2.5.14 PRODUCT SAMPLES, TESTS, AND CERTIFICATES

- 2.5.14.1 The CMAR shall furnish product samples of all items requested or required by the specifications. Product samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the DP and the Owner. CMAR shall submit product samples to the DP and/or Owner for review and approval in accordance with **Sections 2.5.13.1** through **2.5.13.10** above and this **Section 2.5.14**.
- 2.5.14.2 Each product sample must be accompanied by a letter of transmittal containing the following information:
- A. Date of submission
 - B. Name of Project
 - C. Location of Project
 - D. Branch of Work (specification section number)
 - E. Project number
 - F. Name of submitting CMAR
 - G. Name of Subcontractor
- 2.5.14.3 The CMAR shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the CMAR shall endorse it and submit it to the DP together with a statement of compliance in its own name.
- 2.5.14.4 No tests, inspections or approvals performed or given by the Owner or the DP or others acting for the Owner or any agency of Federal, State or local government nor any acts or omissions by the Owner or the DP in administering this Agreement shall relieve the CMAR from its duty to perform the Work in accordance with the Contract Documents, its responsibility as to manner and mode of construction, its duties to adhere to professional standards of its industry, and applicable law.
- 2.5.14.5 Unless the DP is requested at the time of submittal to return samples at the CMAR's expense, rejected samples may be destroyed.
- 2.5.14.6 After delivery of materials, the DP may make such tests, as it deems necessary, with samples required for such tests being furnished by and at the cost of the CMAR. Any test is for the benefit of the Owner and shall not relieve CMAR of the responsibility for providing quality control measures to assure that Work strictly complies with the Construction Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.
- 2.5.14.7 On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the DP shall have the right to cause their removal and replacement by items meeting Construction Document requirements or to demand and secure appropriate reparation to the Owner from the CMAR.

2.5.15 AS-BUILT DRAWINGS

- 2.5.15.1 At Final Completion, the CMAR shall complete and turn over to the DP

the as-built drawings for review by the DP. The as-built drawings shall consist of a set of drawings, which clearly indicate all field changes that were made to adapt to field conditions, field changes resulting from Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the as-built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The as-built drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color.

- 2.5.15.2 For any changes or corrections in the Work which are made subsequent to Substantial Completion, such revisions shall be submitted to the DP as part of the as-built drawings submitted under **Section 2.5.15.1**.

2.5.16 SCHEDULE AND COORDINATION

- 2.5.16.1 The CMAR shall schedule and coordinate the work of all of its Subcontractors on the Project including their use of the Site. The CMAR shall keep the Subcontractors informed of the Project construction schedule to enable the Subcontractors to plan and perform the Work properly.

- 2.5.16.2 With the submission of the GMP for the entire Project or a price for a phase of the Project, the CMAR shall submit a detailed CPM construction schedule for the entire Project or for the respective phase of the Project, which shall provide for the expeditious and practicable execution of the Work covered by the submitted schedule. The schedule shall be consistent with any previously issued schedules, not to exceed time limits current under the Contract Documents for the entire Project or for the respective phase of the Project and shall be related to the entire Work and the entire Project to the extent required by the Contract Documents.

- 2.5.16.3 The schedule for the performance of the Work or any phase of the Work as applicable shall be a CPM schedule with reasonable detail including a time scaled network and computer printout in accordance with the following requirements:

- a) no activity shall be longer than twenty-one (21) calendar days in length except fabrication and delivery activities:
- b) each activity must be logically tied to another activity to show its interdependency with other activities:
- c) installation activities must be logically tied to submittal/approval, fabrication and delivery:
- d) only a single critical path shall be designated.

- 2.5.16.4 The CMAR shall prepare and keep current, for the DP's approval, a time schedule of submittals which is coordinated with the CMAR's construction schedule and allows the DP the specified time to review submittals.

- 2.5.16.5 The CMAR's schedules shall be revised monthly to reflect ACTUAL conditions in the field. A copy of the revised schedule and narrative report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed to be taken shall be submitted with each Application for Payment. The submittal of an acceptable updated CPM schedule is a

condition precedent to the processing of any application for payment made by CMAR. Owner's review of the CPM schedule update shall not be construed as relieving CMAR of its complete and exclusive control over the means, methods, sequences, and techniques of construction. The CMAR understands that the updated CPM construction schedule will be the basis for the analysis and granting of time extensions in accordance with **Article 9** of these General Conditions.

- 2.5.16.6 In addition to the monthly update, the CMAR's schedules shall also be revised at appropriate intervals as required by the conditions of the Work or as directed by the Owner with a printed and electronic copy submitted to the Owner and DP in a format acceptable to the Owner.
- 2.5.16.7 The CMAR shall perform the Work within the identified times of the most recent schedule and consistent with the established Contract Time(s).
- 2.5.16.8 The parties agree that if the CMAR submits an original or updated schedule which shows the Project and/or individual milestone(s) (or phases of the Project if the Project is divided into phases) completing earlier than required by the Contract Documents (the then adjusted Contract Time(s)), the differences between the forecasted early completion and the required completion shall be considered Project owned float available for use by both the Owner and the CMAR.
- 2.5.16.9 Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the adjusted Contract Time(s). Since float time within the construction schedule is jointly owned, it is acknowledged that Owner-caused delays on the Project may be offset by Owner-caused time savings. In such an event, the CMAR shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded and the contractual completion date or milestone date is also exceeded.
- 2.5.16.10 It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated construction schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

2.6 CMAR'S RESPONSIBILITY FOR PROJECT SAFETY

- 2.6.1 CMAR recognizes the importance of performing its Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at or in the vicinity of the Work, whether working or visiting the Project or Campus; (ii) all Work, including materials and equipment incorporated or stored on or off Site; and (iii) all other or adjacent property. As among CMAR, DP and Owner, CMAR assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. CMAR shall, prior to commencing construction, designate a safety manager with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. The safety manager shall make routine daily inspections of the Site and shall hold at least weekly safety meetings with CMAR's personnel and its Subcontractors.
- 2.6.2 CMAR and its Subcontractors shall comply with all Legal Requirements relating to

safety, as well as any Owner specific safety requirements set forth in the Contract Documents, which do not violate any applicable Legal Requirements. CMAR will immediately report, in writing, to Owner's Representative and, if required by applicable Legal Requirements, all government or quasigovernment authorities having jurisdiction over matters involving the Work, any injury, loss, damage or accident occurring at the Site.

- 2.6.3 CMAR's responsibility for safety under this **Section 2.6** is not intended to in any way relieve CMAR's Subcontractors from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 2.6.4 The requirements in this **Section 2.6** supplement and are in addition to the other requirements in the Contract Documents, including, without limitation, **Article 5**.

2.7 WARRANTY

- 2.7.1 CMAR warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CMAR's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain the Work by persons other than CMAR, Subcontractors or others under CMAR's control. Nothing in this warranty shall limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this **Section 2.7** or the Contract Documents. CMAR will provide Owner with all manufacturers' warranties and operation and maintenance manuals upon Substantial Completion of the Work. CMAR's warranty shall be for two (2) years and will commence for all portions or phases of the Work upon Substantial Completion of the entire Work as determined by the Owner under the Contract Documents. If the Project is divided into phases or portions, this means that the warranty for each phase or portion of the Project will commence upon Substantial Completion of the last phase, as determined by the Owner under the Contract Documents. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

2.8 CORRECTION OF DEFECTIVE WORK

- 2.8.1 If any portion of the Work is covered over contrary to the request of the DP or Owner or as required by the Construction Documents or the applicable building standards, it must be uncovered for observation at the CMAR's expense if requested by the DP or Owner in writing.
- 2.8.2 If any portion of the Work, other than those portions required to be inspected by the DP, the Owner or others, prior to being covered, has been covered over, the DP or Owner may request that it be uncovered for observation. If such portion is found to be in accordance with the requirements of the Construction Documents, the cost of uncovering it shall be charged to the Owner as a Change Order. If such portion is found not to be in accordance with the requirements of the Contract Documents, the CMAR shall bear such costs.
- 2.8.3 CMAR agrees to promptly correct any Work that is found not to be in conformance with the Contract Documents, whether previously inspected by the Owner's representatives or not unless a specific written waiver of such non-conformance has been provided to the CMAR by the Owner. This obligation shall continue for a

period of two (2) years from the date of Substantial Completion of the entire Work and if the Project is done in phases or portions Substantial Completion of the last phase or portion as determined by the Contract Documents. Nothing in this Section shall waive any rights that the Owner may have under Arizona law.

- 2.8.4 CMAR, upon receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, shall, within seven (7) days (except in the case of an emergency or item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps within seven (7) days, Owner, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period provide CMAR with notice that Owner will commence to correct such nonconforming Work with its own or other forces. CMAR shall be responsible for all costs and expenses that Owner incurs in remedying any Work not in conformance with the Contract Documents, including at its sole discretion any of its own staff time costs and all DP or other fees incurred. Owner will notify CMAR of its intent to make such corrections at or before the commencement of the corrective work.
- 2.8.5 The two-year period referenced in **Section 2.7.1** applies only to the CMAR's obligation to correct Work not in conformance with the Construction Documents and shall not constitute a period of limitations with respect to any other rights or remedies Owner may have with respect to CMAR's other obligations under the Contract Documents or under applicable law. CMAR acknowledges that, for purposes of statutes of limitations.

ARTICLE 3

DP'S SERVICES AND RESPONSIBILITIES

- 3.1 The DP will be the initial interpreter of the requirements of the Construction Documents. The DP shall render written interpretations with reasonable promptness following a written request from the Owner or the CMAR. These interpretations shall be consistent with the intent of the Contract Documents.
- 3.2 The DP will review and approve or take other appropriate action upon the CMAR's submittals, such as shop drawings, product data and samples, for conformance with the Construction Documents. Such action shall be taken with reasonable (within 14 days) promptness as specified so as to cause no delay. The DP's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.
- 3.3 Following consultation with the Owner, the DP will take appropriate action on CMAR's requests for Change Orders and may authorize minor changes in the Work as defined in **Section 10.3**.
- 3.4 The DP and Owner will each have authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing but will take such action only after consultation with the other. However, neither the authority to act given to the DP and the Owner under this **Section 3.4** nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the CMAR, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 3.5 Based on the DP's observations of the Work, evaluation of applications for payment and consultation with the Owner, the DP will determine the amount owing to the CMAR and will issue certificates for payment.

3.6 DESIGN SERVICES

3.6.1 Under separate contract with the Owner, the DP shall submit to Owner all required Design Submission Documents to describe the Project's essential elements. The Design Submission Documents required of the DP will include drawings, specifications, and other documents as may be necessary to fully identify the Project scope and materials, together with the DP's estimates of Probable Construction Cost. The CMAR shall submit to the Owner detailed estimates of Construction Costs as part of each design submission. At the time of the scheduled submission, CMAR, DP and Owner shall meet and confer about the submission. During the meeting, the CMAR and DP shall identify, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or previously submitted Design Submission Documents and any changes in the CMAR's estimated Construction Costs or the DP's estimate of Probable Construction Cost. Minutes of the design phase meetings will be maintained by the DP and provided to all attendees for review. Within two (2) weeks (SD and DD phases) following the design review meeting, Owner shall approve or reject the Design Submission Documents and the CMAR's estimate of Construction Costs and the DP's estimate of Probable Construction Cost. Owner may reject full or partial design submittals, which do not conform with the Owner's Project Criteria, overall Project concepts, or Project Budget or for any other reasonable cause consistent with the intent of the Contract Documents. Upon such rejection, the DP shall redesign or reengineer the rejected portion of the design submission. If Owner rejects the CMAR's estimate of Construction Costs, CMAR shall revise the estimate of Construction Costs at no additional cost, such that it meets Owner's requirements.

3.6.2 As necessary for the timely completion of the Work, the DP shall submit to Owner for Owner's review and approval or rejection proposed Construction Documents describing the requirements for construction of the Project. The Owner, DP and CMAR shall have design review meetings to discuss the proposed Construction Documents consistent with **Section 3.6.1** above, and Owner shall review and approve or reject the proposed Construction Documents within three (3) weeks.

3.7 The DP will provide administration of this Agreement on behalf of the Owner as described throughout this Agreement.

3.8 In interacting with the CMAR, the DP will be a representative of the Owner during construction and until the two-(2) year warranty period has expired. The DP is not the "Owner's Representative" as such term is used in the Contract Documents. The DP and the CMAR shall advise and consult with the Owner. All instructions and communications by the DP to the CMAR shall be copied to the Owner. The DP will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

ARTICLE 4

OWNER'S SERVICES AND RESPONSIBILITIES

4.1 Owner shall, throughout the performance of the Work, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.

4.2 Owner's Representative shall be responsible for processing Owner-supplied information and approvals or rejections in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide CMAR with reasonably prompt notice if it observes any failure on the part of CMAR to fulfill its

contractual obligations, including errors, omissions or defects in the performance of its Work. Failure of the Owner or its representatives to notify the CMAR shall not reduce, change, lessen or alleviate in any way, duties and obligations under the Contract Documents.

- 4.3 Owner shall review and approve or reject the CMAR's estimates of Construction Costs within two (2) weeks (SD and DD phases) and three (3) weeks (CD phase) of receipt of the documents as required in this Agreement. The Owner shall review documents submitted by the CMAR and shall render decisions pertaining thereto without unreasonable delay.
- 4.4 Owner is responsible for all work performed at the Project by other parties directly under the Owner's control and outside these contract documents. Owner shall contractually require such parties to cooperate and coordinate their activities with CMAR so as not to interfere unreasonably with CMAR's ability to complete its construction Work in a timely manner and consistent with the Contract Documents.
- 4.5 The Owner shall reasonably cooperate with the CMAR to keep the Work within the applicable portions of the Project Budget. The Owner will reasonably consider all appropriate and reasonable recommendations of the CMAR, including, without limitation, recommendations for redesign, deductive alternates, reductions in the Work, value engineering, modifications to the Contract Documents or the exercise of other rights or remedies as may be available elsewhere under this Agreement. If at any time it is reasonably apparent to the Owner that the cost of the Work cannot be kept within the applicable portions of the Project Budget or the Guaranteed Maximum Price, the Owner will have the right, but not the obligation, to terminate this Agreement for convenience in accordance with **Section 12.1.1**.
- 4.6 Copies for Review: The Owner, through the DP and consistent with the Owner's contract with the DP, shall furnish the CMAR a sufficient quantity of documents required for the CMAR to perform its services under this Agreement during the pre-construction phase.

ARTICLE 5

SITE CONDITIONS AND ENVIRONMENTAL MATTERS

- 5.1 The CMAR and all of CMAR's trade contractors shall thoroughly acquaint himself with all information provided by Owner concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work and shall be responsible for requesting information typically required within the industry to assess conditions for a similar Scope of Work.
- 5.2 The CMAR and CMAR's trade contractors agree that before submitting a proposed Guaranteed Maximum Price the CMAR will thoroughly examine the Site, the current Design Submission Documents or the Construction Documents (if approved by Owner), boring data and all other available soils information and as-built data made available to it. By submission of each proposed Guaranteed Maximum Price, CMAR represents and warrants to the Owner that CMAR and its trade contractors has satisfied itself as to the character, quality and quantity of surface and subsurface materials and existing obstacles to be encountered in performing the Work. The CMAR acknowledges that boring data and other soils information and as-built data made available to it is only a general indication of materials and/or conditions likely to be found adjacent to borings or in existing structures or facilities or other areas. *The CMAR may rely on this information; however, if the CMAR determines that the information is erroneous, inadequate or ambiguous, it shall report its conclusions to the DP and the Owner in writing within 14 days.* If the CMAR determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the Owner, remains dissatisfied or uninformed, the CMAR shall refrain from submitting a proposed Guaranteed Maximum Price until the matter is resolved. If the

CMAR submits a proposed Guaranteed Maximum Price, the CMAR shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information, including any arising from unforeseen conditions.

5.3 The CMAR *shall within 14 days*, and before such conditions are disturbed, notify the DP and the Owner in writing of:

5.3.1 Subsurface or latent physical conditions encountered at the Site which differ materially from those indicated in the Contract Documents and which were not known by the CMAR or could not have been discovered by careful examination and investigation of the information provided or requested at the time of submission of the most recent proposed Guaranteed Maximum Price or the date on which the latest of the interim GMP or final GMP were agreed to in writing by Owner and CMAR and which could adversely affect the Cost of the Work or the timely performance thereof; or

5.3.2 Unknown and unexpected physical conditions at the Site, of an unusual nature, differing from those ordinarily encountered or generally recognized as inherent in Work of the character provided for in the Contract Documents. The phrases "subsurface or latent physical conditions encountered at the Site" and "unknown and unexpected physical conditions at the Site" include among other matters Hazardous Substances (defined in Section 5.6.2 below) and archaeological conditions (described in Section 5.9 below) falling within Sections 5.3.1 and 5.3.2, respectively.

5.4 The DP and/or the Owner shall within ten (10) days after receipt of notice from CMAR, or such other reasonable time as necessary, investigate the conditions reported by CMAR. If the DP and/or the Owner find that conditions are so materially different as to support an equitable adjustment in the current proposed, the interim or the final Guaranteed Maximum Price or the Contract Time(s), an equitable adjustment will be accomplished by written change letter in the case of an equitable adjustment to a proposed Guaranteed Maximum Price or by Change Order in the case of an equitable adjustment to the Contract Time(s) or the Guaranteed Maximum Price in the Interim GMP Setting Modification under **Section 2.2.2.4** or in the Final GMP Setting Modification under **Section 2.2.2.5**. Adjustment of a proposed, interim or final Guaranteed Maximum Price will for the actual, demonstrated direct cost impact to address the unforeseen condition. Extensions of Contract Time(s) will be considered only when based upon submission of an updated CPM schedule showing an actual unavoidable delay to the Project critical path resulting from the unforeseen condition. If the DP and/or the Owner determine that no change letter or Change Order will be issued, the CMAR shall continue with the Work at no additional cost and under no change in Contract Time(s).

5.5 No claim by the CMAR for an increase in a proposed or final Guaranteed Maximum Price or Contract Time(s) hereunder shall be allowed without proper advance notice and an adequate opportunity for the Owner to investigate.

5.6 Environmental Matters.

5.6.1 CMAR shall provide or cause to be provided a copy of this **Section 5.6** to each Subcontractor participating in the Work.

5.6.2 Definitions. The following terms will have their respective designated meanings: "**Environmental Law**" means any and all laws, ordinances, regulations, rules and administrative and court decisions (federal, state and local) now or hereafter in effect and as amended from time to time pertaining to environmental conditions or to protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980,

as amended (**42 U.S.C. Section 9601, et seq.**); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (**42 U.S.C. 6901, et seq.**); the Toxic Substances Control Act of 1976 (**15 U.S.C. Section 2601, et seq.**); the Superfund Amendments and Reauthorization Act of 1986, Title III (**42 U.S.C. Section 11001 et seq.**); the Clean Air Act (**42 U.S.C. Section 7401, et seq.**); the Federal Water Pollution Control Act (**33 U.S.C. Section 1251, et seq.**); the Safe Drinking Water Act (**42 U.S.C. Section 300f, et seq.**); the Hazardous Materials Transportation Act (**49 U.S.C. Section 5101, et seq.**); the Oil Pollution Act (**33 U.S.C. Section 2701 et seq.**); the Arizona Environmental Quality Act (**Arizona Revised Statutes ("A.R.S.") Section 49-101, et seq.**); the Arizona Underground Storage Tank Act (**A.R.S. Section 49-1001, et seq.**); the Arizona Water Quality Assurance Revolving Fund Act (**A.R.S. Section 49-281, et seq.**) and any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

"Hazardous Substance" means any of the following:

- (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde;
- (ii) any material, substance or waste now or hereafter defined as or included in the definition of **"hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "extremely hazardous substances," "restricted hazardous wastes," "toxic substances," "regulated substances," "solid wastes," "pollutant,"** or **"contaminant"** or words of similar import in any Environmental Law;
- (iii) any other material, substance or waste now or hereafter classified or regulated as **"hazardous"** or **"toxic"** under any Environmental Law;
- (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as **"hazardous"** (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and
- (v) any Hazardous Waste.

"Hazardous Waste" means **"hazardous waste"**, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (**42 U.S.C. 6901 et seq.**) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time (including, without limitation, any such waste resulting from removal of, demolition of, modifications of or additions to part or all of any existing structure, facility or equipment).

"CMAR Hazardous Waste" means any Hazardous Waste arising during or from the Work that is generated by the acts or omissions of CMAR or a Subcontractor (including, without limitation, a CMAR Release) and that is not Owner Hazardous Waste.

"Owner Hazardous Waste" means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on Owner's property or otherwise present on Owner's property at commencement of the Work,

and (ii) that has become Hazardous Waste due to any part of the construction Work. However, Owner Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any CMAR Release.

“Project Hazardous Waste” means any Hazardous Waste arising on Owner’s property from the Work (including, without limitation, CMAR Hazardous Waste and Owner Hazardous Waste), regardless of:

- (a) whether generated by the acts or omissions of Owner, CMAR or a Subcontractor;
- (b) whether it consists of Hazardous Substances that were on or in Owner’s property at commencement of the Work and that have become Hazardous Waste in the course of the Work; and
- (c) whether it consists of Hazardous Substances that are brought on to Owner’s property for or during the Work by CMAR or a Subcontractor and that have become Hazardous Waste in the course of the Work.

“OSHA” means the Federal Occupational Safety and Health Act (**29 U.S.C. Section 651 et seq.**) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time.

“Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event.

“CMAR release” means a release of a Hazardous Substance (including, without limitation, Hazardous Substances that were on or in Owner’s property at commencement of the construction Work) arising from acts or omissions of CMAR or any Subcontractor. However, CMAR release does not include releases of pre-existing Hazardous Substances on Owner’s property of which Owner had not made CMAR aware and as to which CMAR and Subcontractors acted reasonably.

5.6.3 General Requirements.

5.6.3.1 Compliance with Environmental Law and OSHA. CMAR shall comply with, and shall cause all Subcontractors to comply with, this Section **5.6** and with all Environmental Law and OSHA applicable to (i) CMAR, (ii) Subcontractors, (iii) the Work and (iv) all of their activities in respect of the Work.

5.6.3.2 Hazardous Substances.

- (i) Hazardous Substances may be transported to and from and stored, used and be present on Owner’s property in such quantities as are generally recognized to be usual and customary for performance of the Work.
- (ii) Hazardous Waste may be generated on Owner’s property of such kinds and in such quantities, as are generally recognized to be usual and customary in connection with performance of the Work. Hazardous Waste so generated may be stored temporarily on Owner’s property.
- (iii) Prior to Final Completion of the Work, CMAR shall remove or cause to be removed from Owner’s property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (other than Project Hazardous Waste) brought onto Owner’s property during the Work or used in connection with the Work.
- (iv) Other than as provided in (i), (ii) and (iii), CMAR shall not, and

CMAR shall cause all Subcontractors to not, dispose of, generate, manufacture, process, produce, release, treat or otherwise store, use or have in or on or transport to or from Owner's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on Owner's property or otherwise.

5.6.3.3 Releases of Hazardous Substances. Upon any release of any Hazardous Substance in connection with the Work, whether relating to a pre-existing condition on Owner's property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of CMAR or a Subcontractor, CMAR shall take any immediate action reasonably necessary to contain the release. Owner may elect to have CMAR control and carry out any containment, clean-up, removal and remediation activity. Alternatively, Owner shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, CMAR shall absorb, without reimbursement from Owner, all costs and expense incurred by CMAR in connection with any CMAR release. In addition, CMAR shall pay or reimburse Owner for all costs and expenses incurred by Owner relating to any CMAR release. If the amount is not paid promptly, Owner may offset the amount due against any amount payable by Owner to CMAR under the Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any release shall be in full compliance with Environmental Law and OSHA and shall be subject to Owner's approval. In addition, Owner may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of Owner to permit human use and habitation of Owner's property and to permit use of Owner's property as a public educational facility, and (B) as reasonably consistent in the judgment of Owner with such habitation and uses.

5.6.3.4 Hazardous Waste. Owner will arrange for handling, storage and disposal of any Project Hazardous Waste. On an interim basis until Owner can make arrangements, CMAR shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA. CMAR shall pay all of Owner's expenses of storing, handling and disposing of CMAR Hazardous Waste. Owner will deliver a statement to CMAR showing Owner's expenses, and CMAR will promptly pay such amount to Owner. If the amount is not paid promptly, Owner may offset the amount due against any amount payable by Owner to CMAR under the Contract Documents or otherwise.

5.6.4 Notifications to Owner. CMAR shall notify the Owner's Representative *within 14 days* upon occurrence of any of the following:

- (i) any discovery by CMAR or any Subcontractor of any Hazardous Substance in any existing structure, facility or equipment on Owner's property.
- (ii) any release of any Hazardous Substance on Owner's property in connection with the Work;
- (iii) the creation or generation of any Hazardous Waste resulting from the Work (including, without limitation, Hazardous Waste arising from the

- removal of, demolition of, modification of, or addition to any existing structure, facility or equipment);
- (iv) the need for any remediation or removal of any Hazardous Substance relating to the Work whether relating to a pre-existing condition on Owner's property or to acts or omissions of CMAR or any Subcontractor; or
 - (v) any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Work.

Except for immediate action to contain any release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, CMAR shall not take any action as to any matter in (i), (ii), (iii), (iv) or (v) without the prior written approval of Owner and Owner shall have the right to elect to control and carry out any such action or matter.

5.6.5 Existing Hazardous Substances. The purpose of this **Section 5.6.5** is to deal with a limited number of particular conditions and requirements.

5.6.5.1 Owner Designated Limited Work Areas. Owner may elect to designate to CMAR specific limitations to the Work area. Whenever Owner does this, CMAR shall not, intentionally or accidentally or otherwise, scrape or otherwise disturb the surface of any walls, ceilings, floors or other surfaces or penetrate or otherwise access any walls, ceilings, floors, overheads or other areas adjacent to or outside the designated Work area unless CMAR has requested and obtained written approval from Owner's Project Manager. Any question about the scope of the Work area must be resolved by Owner's Representative. Any Release of a Hazardous Substance resulting from any scraping, disturbance, penetration or other access outside the Work area will be a CMAR release.

5.6.5.2 Asbestos. CMAR and each Subcontractor agree to comply with all requirements of Environmental Law and OSHA concerning any asbestos in the Work area or on the Site.

5.6.5.3 Restriction on Use of Asbestos-Containing Materials. Except for asbestos-containing materials specifically approved by Owner as provided below, prior to Final Completion, the CMAR, must deliver to Owner a signed statement that "**No asbestos-containing materials were used in the Work**". If asbestos-containing material(s) must be used either for historical restoration or performance considerations, the CMAR must obtain Owner's written approval before ordering the material. The CMAR will advise Owner's Representative and the DP of this need. If Owner approves the asbestos containing material, Owner's Representative will communicate this to CMAR and to Owner's Facilities Management and Risk Management, including the appearance and type of material, location and purpose so that it can be managed long-term without incidence.

5.6.5.4 Waste Electric Light Bulbs. Owner voluntarily uses special handling and disposal procedures for all electric light bulbs. Accordingly, all waste electric light bulbs generated from the Work must be handled by CMAR in the following manner. CMAR shall provide labor and materials for proper packaging of the waste electric light bulbs. Owner's Representative must approve in advance the method of packaging. The packaged waste electric light bulbs will be disposed of as Hazardous Waste as provided in **Section 5.6.3.4**.

5.6.5.5 PCBs. If polychlorinated biphenyl (PCB) containing ballasts, transformers and other electrical equipment are present in a Work area, these items must be handled by CMAR and Subcontractors in the following manner. CMAR shall provide labor and materials for proper packaging of these waste items. The Owner's Representative must approve in advance the method of packaging.

CMAR shall check each ballast, transformer and other item of electrical equipment for labeling. If there is a label on the item stating, 'No PCB's', the CMAR may dispose of the item as non-Hazardous Waste. Otherwise CMAR shall package the item as provided in this **Section 5.6.5.5**.

5.6.5.6 Lead-Based Paint. Existing building components that may be coated with lead-based paint may not be disposed of by CMAR as construction debris prior to being tested by Owner.

5.7 Construction Site Safety Requirements.

5.7.1 General. As among CMAR, DP and Owner, CMAR shall have sole responsibility and liability for construction site safety. Without limiting other actions in this regard, CMAR shall, and shall cause each Subcontractor to comply with worker health and safety requirements in Environmental Law and OSHA. In addition, CMAR shall take all reasonable necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Work Site is located or in the vicinity of or passing by the Work Site and shall also take all reasonable necessary and appropriate steps to protect from damage or destruction of the property of Owner and other persons in any part of the facility in which the Work Site is located or in the vicinity of or passing by the Work Site. Among other actions in this regard CMAR shall comply with the requirements of the applicable fire code.

5.7.2 Environmental, Health and Safety Concerns by CMAR or Subcontractors. If in the course of the Work, any environmental, health or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA or otherwise, then the Work activities related to the concern must be discontinued until the concern is resolved. This means prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard, the Owner's Representative must be notified immediately of the concern. Work shall not resume until approval has been provided by Owner. Close coordination will be maintained between Owner and CMAR, so the Project schedule is impacted the least amount possible.

5.8 Scope of Indemnity. The indemnity in **Section 8.2** shall include any claim and Owner's attorneys' fees and other costs and expenses in defending any claim by any person that Owner is responsible or liable for any of the following arising from the acts or omissions of CMAR, any Subcontractor or any of their employees or other workers relating to the Work: (i) any violation of Environmental Law or OSHA; (ii) any failure by CMAR or any Subcontractor to perform or comply with any obligation or requirement in this **Article 5**, (iii) any CMAR release of any Hazardous Substance; (iv) any improper disposition of any Hazardous Substance or Hazardous Waste; (v) any claim by any employee, agent, independent contractor or other worker of CMAR or any Subcontractor and any claim by any other person of personal injury, death or property damage arising from any CMAR release of any Hazardous Substance or arising from any failure by CMAR or any Subcontractor to comply with any Environmental Law or OSHA or this **Article 5**.

5.9 Archaeological Conditions. If in the course of performing the construction Work, the CMAR, any Subcontractor or any of their employees or other persons performing any of the construction Work encounters any native American burial site or any archaeological artifacts, the CMAR shall immediately and before such burial site or artifacts are disturbed

notify Owner's Representative and suspend any activity of the construction Work that might disturb the burial site or artifacts. The Owner will evaluate the situation and will decide what action, if any, needs to be taken.

ARTICLE 6

INSURANCE AND BONDS

6.1 BOND REQUIREMENTS

6.1.1 The CMAR, after the final GMP is set in the Final GMP Setting Modification under **Section 2.2.2.5** and prior to the start of any construction phase Work, shall furnish to the Owner satisfactory performance and payment bonds, each in an amount equal to one hundred percent (100%) of the GMP less the CMAR's pre-construction phase services fee. These bonds shall not be expressly limited as to the time in which action may be instituted against the surety company. The bonds shall be furnished on Owner's forms and shall be executed by a surety company holding a certificate of authority to transact a surety business in the State of Arizona issued by the Director of the Arizona Department of Insurance pursuant to **Title 20, Chapter 2, Article 1**, Arizona Revised Statutes, and rated at least A, VII in the current edition of A.M. Best's. The surety bonds shall not be executed by an individual surety or sureties.

6.1.2 The Owner may require each proposed Subcontractor whose subcontract amount will be \$100,000 or more to furnish a performance bond on the Owner's form for the full amount of its subcontract. This bond shall be obtained by the Subcontractor as a separate entity and the cost shall be included in the Subcontractor's bid to the CMAR. If approved in advance by the Owner, the CMAR may provide Subcontractor default protection that is equivalent or better than bonds provided by the Subcontractors. The cost of such default protection shall be included in the GMP.

6.2 **CMAR'S INSURANCE MUST BE IN PLACE:** The CMAR shall have in place the insurance coverages described in **Sections 6.3.1, 6.3.2 and 6.3.3** and shall furnish satisfactory proof of insurance to Owner before commencing any of the pre-construction phase Work, provided that until commencement of the construction phase of the Work the amount of the commercial general liability insurance may be \$1,000,000 per occurrence and unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000. The CMAR shall not commence any construction phase Work until it has obtained ALL required bonds under **Section 6.1** and insurance under **Section 6.3** and has furnished satisfactory proof of insurance to the Owner. The CMAR shall not permit any Subcontractor to commence work on the Project until all insurance requirements have been complied with by the Subcontractor. If CMAR is a joint venture involving two (2) or more entities, then each independent entity shall satisfy the limits and coverages specified herein or the joint venture shall be a named insured under each policy.

6.3 **REQUIRED COVERAGES:** Without limiting any liabilities or any other obligations of the CMAR, the CMAR shall provide and maintain (and cause each of its Subcontractors to provide and maintain) in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A VII in the current edition of A.M. Best's, the minimum insurance coverages below:

6.3.1 **COMMERCIAL GENERAL LIABILITY** Commercial general liability insurance, with minimum limits of \$1,000,000 per occurrence, and unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000. Coverage shall be at least as broad as the Insurance Service Office, Inc. **Form CG00010196**, issued on an occurrence basis and endorsed to add the Oracle School District Governing Board, Oracle School District #2, and The H2

Group, LLC (Owner's Representative) as additional insureds with reference to this Agreement, and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Oracle School District Governing Board, Oracle School District #2, The H2 Group, LLC, their officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by CMAR. The policy shall include coverage for:

Bodily injury
 Broad form property damage (including completed operations)
 Personal injury
 Blanket contractual liability
 Products and completed operations and this coverage shall extend for one year past the later of (i) acceptance of the Work under the Contract and (ii) termination of this Agreement.

Minimum Required Insurance Limits Based on Total Construction Costs

Construction Budget	General Liability for CMAR	Minimum Aggregate
\$0 - \$1,000,000	\$1,000,000	\$2,000,000
\$1,000,000 to \$5,000,000	\$1,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$2,000,000	\$4,000,000
\$10,000,000 to \$20,000,000	\$5,000,000	\$5,000,000
\$20,000,000 to \$30,000,000		
\$30,000,000 to \$40,000,000	\$10,000,000	\$10,000,000
above \$40,000,000		

6.3.2 **BUSINESS AUTOMOBILE LIABILITY** Business automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, with Insurance Service Office, Inc. declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the Oracle School District Governing Board, Oracle School District #2, and The H2 Group, LLC as additional insureds with reference to this Agreement and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Oracle School District Governing Board, Oracle School District #2, and The H2 Group, LLC contributory to the insurance provided by CMAR.

6.3.3 **WORKERS COMPENSATION AND EMPLOYERS LIABILITY** Workers compensation and employer's liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation (Coverage A)	Statutory Arizona benefits
Liability (Coverage B)	Employers \$500,000 each accident \$500,000 each employee/disease \$1,000,000 policy limit/disease

This policy shall include endorsement for All State coverage for state of hire.

6.3.4 **BUILDER'S RISK INSURANCE** Builder's all risk insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Project and shall also insure finished products. Coverage shall also cover the interests of Owner and Subcontractors with respect to the Project, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the CMAR or Subcontractors in the performance of the Work, which will not become a part of the Work to be accepted by the Owner. The property

insurance obtained under this paragraph shall ensure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Legal Requirement, and shall cover reasonable compensation for DP's and CMAR's services and expenses required as a result of such insured loss. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in the CMAR's application for payment and approved by Owner. The CMAR shall be responsible for the deductible of each loss and shall retain responsibility, per the indemnity provisions of this agreement for any loss not covered by the builder's risk policy. This policy shall provide complete coverage for all work in the Project until Final Acceptance by the Owner.

- 6.3.5 PROPERTY INSURANCE All-risk property insurance coverage covering damages and/or destruction of any and all materials and equipment, which will become part of the Work until such materials or equipment are delivered to the Site of the Work.
- 6.4 COPIES OF POLICIES The Oracle School District Governing Board and Oracle School District #2 shall be provided upon request certified copies of all policies and endorsements.
- 6.5 CERTIFICATES OF INSURANCE Certificates of Insurance acceptable to the State of Arizona, the Oracle School District Governing Board and Oracle School District #2 shall be issued and delivered prior to commencement of the pre-construction phase or construction phase of the Work as specified in **Section 6.2** and shall identify this Agreement and include certified copies of endorsements naming the Oracle School District Governing Board, Oracle School District #2 and The H2 Group, LLC as additional insureds for liability coverages and as to liability coverages shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Oracle School District Governing Board, Oracle School District #2, The H2 Group, LLC their officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by CMAR. The certificates, insurance policies and endorsements required by this **Article 6** shall contain a provision that coverages afforded will not be canceled until at least 50 days prior written notice has been given to Owner, the Oracle School District Governing Board and Oracle School District #2. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in the agreement and these General Conditions.
- 6.6 OWNER REMEDIES UPON BREACH OF ARTICLE 6 BY CMAR Failure on the part of CMAR to meet the requirements in this **Article 6** shall constitute a material breach of this Agreement, upon which Owner may immediately terminate this Agreement and the Contract Documents or, in its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by CMAR upon demand, or the Owner may offset the cost of premiums against any monies due to the CMAR under this Agreement or otherwise.
- 6.7 COSTS NOT CHARGEABLE TO OWNER Costs of coverages broader than those required or for limits in excess of those required by this **Article 6** shall not be a Cost of the Work and shall not be charged to the Owner.
- 6.8 WAIVER OF RIGHTS AGAINST THE OWNER, THE ORACLE SCHOOL DISTRICT GOVERNING BOARD OR ENTER NAME CMAR hereby waives and shall cause each Subcontractor and each of their respective insurers providing required coverages to waive their rights of recovery of any damages covered by insurance as provided herein against the Owner, the Oracle School District Governing Board, Oracle School District #2 and The H2 Group, LLC and their employees and independent contractors. Insurance policies

procured pursuant hereto shall provide such waivers of subrogation by endorsement or otherwise.

- 6.9 AUTHORIZATION TO OBTAIN INFORMATION. The Owner may, and the CMAR hereby authorizes the Owner to, request and receive directly from insurance companies utilized by the CMAR in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of the Owner.
- 6.10 CLAIMS REPORTING. Any failure to comply with the claims reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect Owner.
- 6.11 SELF-INSURANCE. The policies of CMAR specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. The CMAR shall be solely responsible for any deductible and/or self-insured retention, and Owner, at its option, may require the CMAR to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

ARTICLE 7

PAYMENT FOR CONSTRUCTION PHASE SERVICES

- 7.1 GUARANTEED MAXIMUM PRICE; SAVINGS.
- 7.1.1 The Owner shall pay the CMAR for the CMAR's performance of the Work pursuant to this Agreement, the Actual Cost of Work, up to but not exceeding the Guaranteed Maximum Price agreed to by Owner and CMAR in the Final GMP Setting Modification under **Section 2.2.2.5**, as such GMP may be modified as provided in the Contract Documents. Any net savings after deduction of any offsets shall be calculated and promptly paid to Owner in a deductive Change Order after Final Completion of the entire Work.
- 7.2 SCHEDULE OF VALUES.
- 7.2.1 Before the commencement of the construction Work or a phase of the construction Work when the construction Work is to be done in phases, the CMAR shall submit to the Owner, and the parties shall agree upon, a complete Schedule of Values for the entire construction Work or the phase of the construction Work, as applicable, following the outline in **Exhibit B**, setting forth the various portions of the construction Work, and the portions of the Guaranteed Maximum Price allocated to each portion. The Schedule of Values shall be based upon the final Guaranteed Maximum Price. The Schedule of Values shall be used as a basis for payment as provided in **Section 7.4.1**. If there are any changes in the final Guaranteed Maximum Price, the Schedule of Values will be adjusted accordingly.
- 7.3 APPLICATIONS FOR PAYMENT.
- 7.3.1 The CMAR shall deliver to the DP and Owner on the last business Day of each month a sworn application for payment in the format specified by Owner covering the Cost of Work applicable to the Work performed during such month. In addition, with each application for payment CMAR shall submit such supporting documentation as is necessary or appropriate in the reasonable judgment of Owner to justify all amounts paid to the CMAR under prior applications for payment. Provided the properly submitted and accurate application for payment, an acceptable updated CPM construction schedule narrative report, per **Section 2.5.16.5**, and supporting documentation as requested by Owner or DP is received

not later than the last day of the month, the Owner shall make payment to the CMAR not later than fourteen (14) days after the Owner receives a certificate for payment issued by the DP relating to the CMAR's application for payment.

7.3.2 The DP, within seven (7) days after receipt of the application for payment, will either issue a certificate for payment to the Owner for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

7.4 AMOUNT OF PROGRESS PAYMENTS.

7.4.1 The Owner shall pay the CMAR the Cost of the Work (including payment in accordance with **Section 7.7** for off-site stored material) through the period covered by the application for payment, less retainage as set forth in **Section 7.5**, provided that the cumulative payment amount before retainage (i) will not exceed the aggregate amount certified by the DP in its certificates for payment and, (ii) also will not exceed the percentage of completion of the Work multiplied by the Guaranteed Maximum Price (excluding items of the Guaranteed Maximum Price not subject to retainage), all as set forth in the Schedule of Values. The fee payable to the CMAR for the construction phase of the Work shall be paid in accordance with the percentage of completion of the Work.

7.5 RETAINAGE.

7.5.1 With respect to the CMAR's fee for the pre-construction phase of the Work and the premiums for bonds and insurance, no retainage shall be withheld.

7.5.2 With respect to payments of all other Costs of the Work for construction (including, among others, the CMAR's fee for the construction phase of the Work), ten percent (10%) retainage shall be withheld until the construction Work is fifty percent (50%) complete. At that point in time and with written request by the CMAR, the Owner will pay one-half (1/2) of the accumulated retainage to the CMAR provided that the Owner has determined that the CMAR is making satisfactory progress on the entire Work and there is no specific cause or claim relating to the Work requiring a greater amount to be withheld. After that point in time, Owner shall pay CMAR ninety-five percent (95%) of the Actual Cost of the Work for construction phase Work and retain five percent (5%) of each payment. However, if at any time the Owner determines, at its sole discretion, that satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all future progress payments under this Agreement pursuant to Owner's determination. This is in addition to the Owner's right to withhold payment as defined under **Section 7.9**. The Owner's decision concerning satisfactory progress and the existence of specific causes or claims requiring greater retention shall be final. All retainage not withheld by Owner to assure proper completion of the Work, payment of liquidated damages or other Owner claims, shall be fully released within sixty (60) days of the DP's issuance of a Certificate of Substantial Completion, provided that any retention by the Owner after such sixty (60) days requires a specific written finding of reasons justifying a further delay in payment and the amount will be limited to the amount Owner reasonably expects to incur to pay or discharge the expenses determined by the finding.

7.6 EARLY RELEASE OF SUBCONTRACTOR RETAINAGE.

7.6.1 If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the CMAR may request the Owner to disburse the retainage allocable to such Subcontractor, after delivering to Owner any necessary consent to such disbursement from such Subcontractor's surety, in a form satisfactory to the Owner. If the Owner is satisfied that the Subcontractor's

work has been completed in accordance with the Contract Documents, the Owner may disburse said retainage to CMAR for payment to the Subcontractor, however, the two-year warranty period with respect to such work shall not commence until Substantial Completion of the entire Work.

7.7 PAYMENT FOR ON-SITE AND OFF-SITE MATERIALS.

7.7.1 Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may be similarly made for materials and equipment suitably stored off the Site, conditioned upon the CMAR furnishing evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment therefore and there are no claims of third parties; (b) the materials and equipment are adequately insured for full replacement value plus delivery with the Owner named as an additional insured on the insurance policy; and (c) such other matters as the Owner may reasonably request in order to protect its interests. The CMAR's requirements for insurance coverage in Section 6.3.4 and 6.3.5 shall remain for the duration of the work until Final Acceptance by the Owner.

7.8 TITLE TO CONSTRUCTION WORK.

7.8.1 The CMAR warrants that title to all construction Work covered by an application for payment shall pass to the Owner no later than the time of payment. The CMAR further warrants that upon submittal of an application for payment, all construction Work for which applications for payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the CMAR, Subcontractors, material men, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work or by reason of being a creditor of any of the foregoing persons or entities. CMAR shall provide unconditional waivers of lien through the date of the application for payment from each Subcontractor and supplier of any tier with each application for payment and when requested by Owner. CMAR shall also provide with each application for payment unconditional waivers of lien through the date of the prior application for payment from each Subcontractor and supplier of any tier. As a condition precedent to Final Completion of the entire Work or a phase of the Work if the Work is done in phases the CMAR shall provide unconditional waivers of lien from all Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the entire Work or the phase of the Work, as applicable.

7.9 WITHHOLDING OF PAYMENT.

7.9.1 The Owner may withhold payment from any application for payment to the extent necessary to protect the Owner from loss because of:

7.9.1.1 Unsatisfactory job progress as determined by the Owner.

7.9.1.2 Disputed Work or materials.

7.9.1.3 Defective Work not remedied.

7.9.1.4 Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors, materialmen, suppliers, or others.

7.9.1.5 Failure of the CMAR to make payment to Subcontractors or suppliers within seven (7) days after receipt of each progress payment.

7.9.1.6 The CMAR's failure to perform any of its contractual obligations under the Contract Documents or any other agreement with the Owner.

7.9.1.7 Deficiencies or claims asserted by Owner against CMAR arising from any other project.

- 7.9.1.8 Damage to the Owner or a separate contractor caused by the fault or neglect of the CMAR or any Subcontractor to the extent not covered by insurance;
- 7.9.1.9 Reasonable evidence that the entire Work or a phase of the Work if the Work is being done in phases will not be Substantially Complete within the Contract Time(s) due to delay for which the Contractor is responsible, or that the unpaid balance of the Guaranteed Maximum Price would not be adequate to cover liquidated damages for any anticipated unexcused delay; reasonable evidence that the unpaid balance of the Guaranteed Maximum Price for the entire Work will not be sufficient to complete the entire Work or the phase of the Work, as applicable; or
- 7.9.1.10 Any other reason which in Owner's judgment disqualifies CMAR from receiving the full amount of the application for payment.

If the above basis for withholding payment is remedied, payment shall be made within thirty (30) days for amounts previously withheld. Prior to any withholding pursuant to this **Section 7.9**, the Owner shall meet with CMAR to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

7.10 FAILURE OF PAYMENT

- 7.10.1 If the Owner does not take all reasonable measures to pay the CMAR within thirty (30) days after the date established herein the CMAR may proceed as set forth in **Section 12.3.1**.

7.11 SUBSTANTIAL COMPLETION.

- 7.11.1 When the CMAR believes the entire Work or a phase of the Work when the Work is being done in phases, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the CMAR shall notify the Owner and the DP and submit to the Owner and DP a comprehensive list of items to be completed or corrected relating to the entire Work, the phase of the Work or the portion thereof, as applicable. Within five (5) working days of receipt of the CMAR's notice and list, the Owner or its representatives, the DP and CMAR will jointly make an inspection to determine whether Substantial Completion has occurred. If it is determined by the Owner that the entire Work, the phase of the Work or a portion thereof, as applicable, is Substantially Complete, the DP shall issue the Punch List and the certificate of substantial completion stating the date of Substantial Completion which shall be executed by the Owner or its representatives, the DP and the CMAR. The CMAR shall proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents.

7.12 FINAL COMPLETION AND FINAL PAYMENT

- 7.12.1 Completion of all outstanding Work items noted in the Punch List and other Contract Documents requirements is required for DP and Owner to certify Final Completion of the entire Work, a phase of the Work if the Work is being done in phases or a portion thereof that the Owner has agreed to accept separately. Requirements also include, but are not limited to, equipment operations training for Owner, satisfaction of the conditions precedent in **Section 7.12.2**, the CMAR being in compliance with the Contract Documents as to all matters relating to the Work, submission to and review and approval by DP and Owner of as-built drawings and all record and close out documents as specified in Owner's project

specifications, including but not limited to all operating manuals, warranties, assignments of warranties from Subcontractors and other deliverables required by the Contract Documents.

7.12.2 Certain Conditions Precedent to Final Payment. Neither final payment nor any final release of retainage as to the entire Work shall become due until the CMAR submits to the Owner as to the entire Work:

7.12.2.1 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;

7.12.2.2 Consent of surety to the final payment;

7.12.2.3 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents;

7.12.2.4 Unconditional waivers of lien from all Subcontractors, material men, suppliers, or other persons or entities having provided labor, materials and equipment relating to the entire Work;

7.12.2.5 Approval by DP as being accurate and complete of the as-built drawings submitted by CMAR under **Section 2.5.15.1**; and

7.12.2.6 All supporting documentation justifying Actual Costs of the Work paid or to be paid by Owner required to be delivered by CMAR to Owner under this Agreement.

7.12.3 If, after Substantial Completion of the entire Work, Final Completion thereof is materially delayed through no fault of the CMAR or by the issuance of additional Change Orders or Change Directives by the Owner, the Owner may at its sole discretion, upon request of the CMAR, and without terminating this Agreement, make payment of the balance due for that portion of the Work fully and properly completed. If the remaining balance for Work not fully and properly completed is less than the applicable retainage, and if bonds have been furnished, the written consent of surety to payment of the balance for that portion of the Work fully and properly completed shall be submitted by the CMAR to the Owner, and such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the CMAR or the Owner.

7.12.4. Acceptance of final payment by the CMAR shall constitute a waiver of affirmative claims by the CMAR. The making of the final payment by the Owner shall constitute a waiver of claims by the Owner, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents and other rights provided under Arizona law.

7.13 ALLOWANCES.

7.13.1 The CMAR shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the CMAR shall not be required to employ persons or entities against which the CMAR makes reasonable objection. Unless otherwise provided in the Contract Documents:

7.13.1.1 Materials and equipment under an allowance shall be selected by the Owner within a reasonable time frame as defined in the Owner approved Project schedule.

- 7.13.1.2 Allowances shall cover the cost to the CMAR of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- 7.13.1.3 Allowances shall not include professional or construction fees, general conditions, bond and insurance premiums;
- 7.13.1.4 Allowances shall cover CMAR's costs for unloading and handling at the Site, labor, installation costs and other expenses;
- 7.13.1.5 Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order in accordance with provision of **Article 10**. The amount of the Change Order shall reflect the difference between actual costs and the allowances plus the CMAR's fee on such difference in accordance with **Article 10** if the actual costs are greater than the allowances.

7.14 PROJECTS DONE IN PHASES: ALLOCATION OF GMP, USE OF BIDDING CONTINGENCY AND MODIFICATION OF FINAL GMP

7.14.1 When the construction Work is to be done in phases, the final Guaranteed Maximum Price set under **Section 2.2.2.5(ii)** and the "bidding contingency" therein will be allocated in writing among the phases prior to commencement of any of the construction Work and prior to bidding any phase of the construction Work. CMAR will submit a proposed allocation to the Owner. The Owner will promptly review the proposed allocation. If the Owner does not agree with the proposed allocation, CMAR and Owner shall use their good faith best efforts to agree on the allocation. If an agreement is not reached, the Owner shall make a reasonable final determination on the allocation.

7.14.2 When the construction Work is to be done in phases, promptly after the CMAR has completed accepting Subcontractor bids for each phase of the construction Work, the final Guaranteed Maximum Price and the amount in the "bidding contingency" will be modified as follows:

- (A) Start with the completed form of **Exhibit C** attached to the Final GMP Setting Modification pursuant to **Section 2.2.2.5(ii)**, as previously modified under this **Section 7.14.2**.
- (B) To the extent that the aggregate amount included in the Subcontractor bids for this phase accepted by CMAR relating to any line item in the final GMP is less than the amount in the line item in the final GMP allocated to this phase, move the excess amount from the line item to the "bidding contingency". The moved amount becomes part of the "bidding contingency" allocated to this phase of the construction Work.
- (C) To the extent that the aggregate amount included in the Subcontractor bids for this phase accepted by CMAR relating to any line item in the final GMP allocated to this phase is more than the amount in the line item in the final GMP allocated to this phase, move an amount from the "bidding contingency" allocated to this phase to the line item sufficient to cover the deficiency in the line item to the extent the amount is available in the "bidding contingency" allocated to this phase.
- (D) Upon completion of the preceding steps reduce the remaining "bidding contingency" by any amount remaining in the "bidding contingency" allocated to this phase. Any amount in the "bidding contingency" allocated to a phase of the construction Work (including any amount moved from another line item to the "bidding contingency" allocated to that phase) that is not used for that phase is to be made available for other phases of the construction Work.
- (E) The result of the above actions constitutes a modified "bidding contingency" and the modified final GMP shall be deemed to be the final

GMP for all purposes of this Agreement.

ARTICLE 8
INDEMNIFICATION

8.1 PROPRIETARY RIGHTS, PATENT AND COPYRIGHT INFRINGEMENT

- 8.1.1 If elected by Owner, CMAR shall defend any action or proceeding brought against Owner, the Oracle School District Governing Board, the Oracle School District #2, their consultants, agents and employees based on any claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any proprietary rights, United States patent or copyright, now or hereafter issued. Owner agrees to give prompt notice in writing to CMAR of any such action or proceeding and to provide authority, information and assistance in the defense of it. Regardless of whether or not Owner elects to have CMAR undertake the defense, CMAR shall indemnify and hold harmless Owner, the Oracle School District Governing Board and Oracle School District #2 from and against all damages, liabilities, judgments, costs and expenses, including attorney's fees and litigation expenses, incurred by or awarded against Owner, the Oracle School District Governing Board or Oracle School District #2 in any such action or proceeding. CMAR further agrees to keep Owner reasonably informed of all developments in the defense of such actions.
- 8.1.2 If Owner is enjoined from the operation or use of the Work or any part thereof in connection with any proprietary rights, patent suit, claim, or proceeding, CMAR shall at its sole expense take reasonable steps to procure the right to operate or use the Work or part. If CMAR cannot so procure the aforesaid right within a reasonable time, CMAR shall then, promptly, at CMAR's option and at CMAR's sole expense (i) modify the Work so to avoid infringement of any patents, copyrights or other proprietary rights; or (ii) replace said Work with Work that does not infringe or violate any such proprietary rights, patent or copyright.
- 8.1.3 **Sections 8.1.1 and 8.1.2** above shall not be applicable to any action or proceeding based on infringement or violation of a proprietary rights patent or copyright (i) relating solely to a particular process or the product of a particular manufacturer specified by Owner and such processes or products which are something other than that which has been offered or recommended by CMAR to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.
- 8.1.4 The obligations set forth in this "**Proprietary Rights, Patent and Copyright Indemnification**" provisions shall constitute the sole agreement between the parties relating to liability for infringement or violation of any proprietary rights, patent or copyright.
- 8.1.5 This **Section 8.1** shall continue in effect indefinitely and shall not terminate upon completion and acceptance of the Work or upon termination or expiration of this Agreement.

8.2 GENERAL INDEMNITY

- 8.2.1 CMAR shall indemnify, hold harmless and, if elected by Owner, defend Owner, the Oracle School District Governing Board, and the Oracle School District #2, their

consultants, agents and employees from and against any and all claims, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of Contractor, any Subcontractor or any of their officers, employees, agents or independent contractors relating to the Work. This indemnity shall not be construed to include claims, demands, losses, damages, costs and expenses to the extent arising from the negligent acts or omissions of the Owner or its officers, employees, agents and independent contractors (other than CMAR and its officers, employees, agents and independent contractors). This indemnity includes, but is not limited to, (I) personal injury, sickness or death of persons and property damage and (II) matters described or referred to in **Section 5.8** of these General Conditions.

The obligations of the CMAR under this Section 8.2.1 shall not extend to the liability of the DP, the DP's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the DP, the DP's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

- 8.2.2 This **Section 8.2** shall continue in effect indefinitely and shall not terminate upon completion and acceptance of the Work or upon termination or expiration of this Agreement.

ARTICLE 9

TIME

- 9.1.1 Both the CMAR and Owner recognize that any time limits set forth in the Contract Documents are of the essence of this Agreement. CMAR agrees that it will timely commence performance of the Work, achieve Substantial Completion and Final Completion of the entire Work and achieve any interim milestones for Substantial Completion and Final Completion as required by the Contract Documents. In addition, if the Work is done in phases or if the Owner has agreed to separately accept a portion of the Work, CMAR agrees to achieve Substantial Completion and Final Completion of each phase and portion by the dates agreed by Owner and CMAR.
- 9.1.2 It is agreed that time is of the essence of each and every portion of this Agreement and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Where, under this Agreement additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Agreement. Failure to achieve any date or time for achievement of Substantial Completion or Final Completion of the entire Work, any phase of the Work if the Work is done in phases or any portion of the Work that the Owner has agreed to accept will result in the assessment of Liquidated Damages, as provided by this Agreement. The per diem amount shall be paid for each and every calendar day that the CMAR shall be in default after the time stipulated in this Agreement for Substantial Completion or Final Completion of the entire Work or a phase or portion of the Work. The amount is fixed and agreed upon by and between the CMAR and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. Said sums may be withheld by the Owner from any amounts due to the CMAR from the Owner, whether as the result of this Agreement or any other obligation between the Owner and the CMAR.

- 9.1.3 CMAR shall be entitled to an appropriate adjustment of its Guaranteed Maximum Price for extended construction general conditions only for delays directly caused by the actions or inactions solely of the Owner.
- 9.1.4 Notice of any delay in the Work shall be made in writing by the CMAR to the DP and Owner immediately but in no event later than twenty-four (24) hours after discovery of the event giving rise to the delay. The CMAR shall provide additional details concerning cause(s) of the delay in writing to the DP and the Owner within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall constitute a waiver of and absolutely bar any and all later claims for additional days or time. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the CMAR must give written notice every month at the same time it submits the updated progress narrative report to the DP. Within fifteen (15) days after the elimination of any such delay, the CMAR shall submit further documentation concerning the delay and, if applicable, a formal written request covering an extension of the Contract Time(s) for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the progress schedule, including a “fragnet” and any other data demonstrating a delay in the critical path of the entire Work, the phase of the Work if the Work is done in phases or the portion of the Work if the Owner has agreed to separately accept a portion of the Work or individual milestone or the overall Project completion. If the CMAR does not comply with the notice and documentation requirements set forth above, the claim for delay is waived and absolutely barred.

ARTICLE 10
CHANGES TO THE CONTRACT PRICE AND TIME

10.1 CHANGE ORDER

- 10.1.1 After this Agreement is signed, modifications to this Agreement may only be made by a written modification of this Agreement executed by Owner and CMAR or by a written Change Order executed by Owner and CMAR, provided that any changes in the Contract Time(s), any changes in the scope of the Work as set forth in the Design Submission Documents or the Construction Documents, and any changes to the interim or final Guaranteed Maximum Price set in the Interim GMP Setting Modification under **Section 2.2.2.4** or the Final GMP Setting Modification under **Section 2.2.2.5** may only be made by a written Change Order executed by Owner and CMAR.
- 10.1.2 By written Change Directive (defined below) at any time, the Owner, may make any changes within the general scope of this Agreement, issue additional instructions, require additional or modified Work or direct deletion of Work. The CMAR shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the Owner and shall proceed in accordance with the procedures set forth in this **Section 10.1.2**. The Owner’s right to make changes shall not invalidate this Agreement or relieve the CMAR of any liability. Any requirement of notice to the surety shall be the responsibility of the CMAR. If the CMAR proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this **Article 10**, the CMAR hereby waives all rights or claims CMAR may have as a result of the change.
- 10.1.3 “**Change Order**” means a written instrument issued after execution of this

Agreement signed by DP, Owner and CMAR, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment, if any, to the interim or final Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, to the Contract Time(s) of performance set forth in the Contract Documents.

10.1.4 All such changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents, and Owner, DP, and CMAR shall negotiate in good faith and as expeditiously as possible on the appropriate adjustments, as applicable. No Guaranteed Maximum Price adjustment on account of a Change Order shall include the CMAR's or Subcontractor's profit, fee, home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder, except as allowed in **Section 10.4.1**.

10.2 CHANGE DIRECTIVES

10.2.1 "**Change Directive**" is a written order prepared by the DP and signed by Owner, directing a change in the Work prior to agreement on adjustment of the Guaranteed Maximum Price or the Contract Time(s) or both. Upon receipt of a Change Directive, the CMAR shall promptly proceed with the change in the Work and advise the Owner of the CMAR's agreement or disagreement with the proposed method of adjustment of the interim or final Guaranteed Maximum Price or the Contract Time(s) or both.

10.2.2 Owner and CMAR shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments for the change in Work and such agreement shall take effect by preparation and execution of an appropriate Change Order.

10.3 MINOR CHANGES IN THE WORK

10.3.1 DP may direct minor changes in the Work consistent with the intent of the Contract Documents providing such changes do not involve an adjustment in the Guaranteed Maximum Price or Contract Time(s) and do not materially affect the design, quality, or performance of the Project. The DP shall promptly inform Owner and the CMAR, in writing, of any such changes, and verify that CMAR has recorded such changes on the as-built documents.

10.4 PRICE, TIME, OR SCOPE OF WORK ADJUSTMENT

10.4.1 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

10.4.1.1 By unit prices stated in the Contract Documents.

10.4.1.2 By cost, as defined below, properly itemized and supported by sufficient, substantiating data to permit evaluation, plus a fee of ten percent (10%) of items (1) through (5) described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Work:

- (1) Cost of materials, including delivery but excluding Subcontractor-supplied materials.
- (2) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely

paid by contractor, and worker's or workman's compensation insurance but excluding Subcontractor's labor.

- (3) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, CMAR must prove reasonable rental rate pursuant to actual ownership costs.
- (4) Cost of Subcontracted work calculated as above and Subcontractor's Field Supervision calculated in accordance with paragraph (5) below, plus Subcontractor's insurance and bond premiums as applicable. Insurance and bond premium cost shall not exceed a total of two percent (2%) of Subcontractor's documented cost.
- (5) CMAR's Field Supervision not to exceed five percent (5%) of (1), (2) and (4) above; the parties agree that this mark-up shall fully cover all contractor Field Supervision overhead.
- (6) CMAR's insurance and bond premiums not to exceed a total of two percent (2%), or documented cost.
- (7) All applicable sales tax.
- (8) If this method of cost or credit calculation is selected, in no event shall the combined total fee including all levels or tiers of Subcontractors exceed twenty percent (20%) of the total direct cost of paragraphs (1), (2), (3) and (4). Field Supervision is to be excluded at all levels for the purposes of the limit imposed by this paragraph.

10.4.1.3 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum shall not exceed that amount calculated under item (.2) above.

- 10.4.2 Any dispute regarding the pricing methodology or cost of a change shall not relieve the CMAR from proceeding with the change as directed by the Owner. The cost or credit to the Owner shall be determined by the Owner or its representatives on the basis of **Section 10.4.1**.
- 10.4.3 An Owner-approved written Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the CMAR for inclusion in the Change Order is irrevocably waived.
- 10.4.4 If Owner and the CMAR disagree upon whether CMAR is entitled to be paid for any services required by Owner, or in the event of any other disagreements over the scope of Work or proposed changes to the Work, or Contract Time(s), Owner and CMAR agree to resolve the disagreement consistent with **Articles 10 and 11** of these General Conditions. As part of the negotiation process, CMAR shall furnish Owner and DP with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree, and Owner requests CMAR to perform the services in accordance with Owner's or DP's interpretations of the Contract Documents, CMAR shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to CMAR directing CMAR to proceed and specifying Owner's or DP's interpretation of the services that are to be performed and the Owner shall pay 50% of the disputed costs. The dispute shall be resolved in accordance with Article 11 and reimbursement and/or payment between the parties shall be adjusted accordingly.

10.5 EMERGENCIES

- 10.5.1 In any emergency affecting the safety of persons or property, CMAR shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the interim or final Guaranteed Maximum Price or Contract Time(s) or both on account of emergency work shall be determined as provided in this **Article 10**.

ARTICLE 11

REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

11.1 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND RELIEF.

- 11.1.1 All of CMAR's claims and disputes shall first be referred to the Owner Representative for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the CMAR knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The Owner shall review the claim or dispute with the DP and respond to the CMAR within a reasonable time. Any disagreements with the Owner's response must be timely submitted and resolution attempted through the partnering procedures established pursuant to **Section 2.1.4**, if Owner has elected to have partnering procedures for the Project. If attempts at resolution through the partnering procedures are exhausted and fail or if there are no partnering procedures for the Project, the Owner's response may be reviewed in accordance with Arizona Administrative Code R7-2-1155 as amended or superseded, which shall be the parties' sole remedy. Any claim not timely filed or not complete at the time of filing, is irrevocably waived.

- 11.1.2 If either CMAR or Owner believe that the Contract Documents afford contractual rights or relief from events arising during performance of the Work, including Change Orders, adjustments and relief for the acts or omissions of the other party, or any other party under the control of the other party, for injury or damage to persons or property, or for events which affect the interim or final Guaranteed Maximum Price or Contract Time(s), or both, the party requesting the adjustment or relief shall provide the other party written notice of its request, if possible, prior to incurring any loss, cost or expense, but in no event later than the times, if any, required by the specific provision(s) of the Contract Documents, which form the basis of the party's request. In the absence of said times, such request shall, if possible, be made prior to incurring any loss, cost, or expense, but in no event later than ten (10) calendar days after (i) the occurrence of the event or circumstance giving rise to the request; or (ii) the party reasonably should have recognized the event or condition giving rise to the request, whichever time is sooner. Such request shall be in writing and include sufficient information to advise the other party of the circumstances or events giving rise to the request, the specific contractual adjustment or relief requested, and the basis of such request. Any relief or adjustment afforded any party shall be set forth in a written Change Order in accordance with **Article 10**. Failure to timely request relief under this **Section 11.1.2** waives any right or entitlement to that or any other relief under this paragraph.

11.2 DISPUTE AVOIDANCE AND RESOLUTION

- 11.2.1 The parties are fully committed to working with each other throughout the Project, and agree to communicate regularly with each other at all times, including weekly on-site design and construction status meetings and, if partnering is elected by the Owner under **Section 2.1.4**, using the partnering procedures established by

Owner, DP and CMAR, so as to avoid or minimize disputes or disagreements. CMAR's Representative along with the DP and CMAR's Construction Superintendent shall attend weekly status meetings with the Owner's Representative. The CMAR shall take minutes outlining the issues discussed, action responsibility, due dates and resolution and distribute them within three (3) days of each meeting. To the extent disputes or disagreements arise during the Project, both CMAR and Owner commit to resolving such disputes in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. In the first instance, CMAR and Owner will attempt to resolve disputes and disagreements at the field level through discussions between CMAR's Representative and Owner's Representative.

- 11.2.2 If the dispute or disagreement cannot be resolved through CMAR's Representative and Owner's Representative, the CMAR's Senior Representative(s) and Owner's Senior Representative(s) shall meet within 48 hours of such failure to attempt to resolve the dispute or disagreement. The parties agree that prior to any meetings between the Senior Representatives; they will exchange with each other any relevant information that will assist the Senior Representatives in resolving the dispute or disagreement. If the Senior Representatives after meeting in good faith determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties agree to submit the dispute or disagreement to the partnering procedures established under **Section 2.1.4**, if Owner has elected partnering for this Project. If there are no partnering procedures or if the partnering procedure fails to produce a mutually-satisfactory resolution, the parties agree to submit the dispute or disagreement to the "**Claims or Controversies**" process as defined in Arizona Administrative code R7-2-1155-1159 et al.

11.3 JUDICIAL PROCESS

- 11.3.1 CMAR, DP and Owner agree that all other parties involved in any claim, controversy, dispute or disagreement relating to the Work may be made parties to any process, proceeding or litigation, and to this end, CMAR, DP and Owner will include appropriate provisions in all contracts they execute with other parties in connection with this Project requiring attendance and participation in any such process, proceeding or litigation. CMAR, DP and Owner expressly agree that any dispute resolution proceeding initiated pursuant to this Agreement may be joined or consolidated with any dispute resolution proceeding involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both DP and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.
- 11.3.2 Subject to other provisions in the Contract Documents, unless otherwise agreed by Owner in writing at the time, the CMAR shall carry on the Work and maintain its progress during any claims and controversy proceedings or dispute and disagreement process, and the Owner shall continue to make payments to the CMAR in accordance with the Contract Documents of amounts that are not subject to the claim, controversy, dispute or disagreement and the Owner shall pay 50% of the disputed cost pending resolution in accordance with this Article.

11.4 CONSEQUENTIAL DAMAGES

NOT WITHSTANDING ANYTHING HEREIN, TO THE CONTRARY, THE CMAR SHALL WAIVE ANY RECOVERY OF CONSEQUENTIAL LOSSES OR DAMAGES FROM THE OWNER, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO USE AND LOSS OF PROFITS. THE OWNER, NOT WITHSTANDING ARTICLE 6 OF

THE MASTER GENERAL CONDITIONS OR THE LIQUIDATED DAMAGES CLAUSE 5.6 OF THE AGREEMENT OR ANYTHING ELSE HEREIN, SHALL WAIVE RECOVERY OF CONSEQUENTIAL DAMAGES FROM THE CMAR ARISING FROM EXECUTION OR BREACH OF THIS CONTRACT.

ARTICLE 12
STOP WORK AND TERMINATION

12.1 OWNER'S RIGHT TO STOP WORK

12.1.1 Owner may, without cause and for its convenience, order CMAR in writing to stop or suspend its Work or terminate this Agreement or both.

12.1.2 CMAR may seek an adjustment of the interim or final Guaranteed Maximum Price or Contract Time(s) or both under **Article 10** of these General Conditions to the extent that its Work has been adversely impacted by any suspension or stoppage of the Work by Owner, unless actions or inactions of the CMAR or a Subcontractor are the cause of the Owner stopping the Work.

12.1.3 If Owner terminates this Agreement due to inability to keep the Work within the interim or final Guaranteed Maximum Price or the Contract Time(s), the Owner will provide thirty (30) days written notice to CMAR and pay for all documented acceptable costs incurred by CMAR to the termination date.

12.2 OWNER'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE

12.2.1 If CMAR persistently fails to (i) provide a sufficient number of skilled workers; or the materials required by the Construction Documents or both; (ii) comply with applicable Legal Requirements; (iii) timely pay, without cause, its Subcontractors; (iv) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s) as may be adjusted as provided in this Agreement; or (v) otherwise perform the Work and its obligations consistent with the Contract Documents, Owner shall have the right, in addition to any other rights and remedies provided in the Contract Documents or by law, after seven (7) days written notice to CMAR and CMAR's failure to commence to cure, diligently pursue the cure and completely cure the default within a reasonable time, to (i) perform and furnish through itself or through others any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to CMAR under the Contract Documents; or (ii) terminate the employment of CMAR for all or any portion of the Work, enter upon the Site and take possession, for the purpose of completing the Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which CMAR hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. In the event of such termination, CMAR shall be entitled to be paid only for all Work properly performed prior to its default and only if adequate funds are available as set forth herein. If the Owner's cost and expense of completing CMAR's Work shall exceed the Guaranteed Maximum Price, then CMAR or its surety shall pay the difference to Owner. Such costs and expense shall include, not only the cost of completing the Work to the satisfaction of Owner and of performing and furnishing all labor, materials, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expense, including attorney's fees and expenses incurred in connection with the procurement and defending claims arising from CMAR's default.

- 12.2.2 The parties agree that if the Owner terminates this Agreement for cause and such termination is finally determined to be improper, the termination for cause will be converted to a termination for convenience and the provisions of **Article 11** shall apply.
- 12.2.3 The parties agree that if CMAR institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate CMAR's performance of its obligations under the Contract Documents. Accordingly, should such event occur, Owner shall be entitled to request CMAR, its trustee or other successor, to provide adequate assurance of future performance. If CMAR fails to comply with such request within ten (10) days after receiving notice of the request, Owner, in addition to any other rights and remedies provided by the Contract Documents or by law, shall be entitled to terminate this Agreement. Owner shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s), and to deduct the costs incurred from any monies due or to become due CMAR under the Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of such bankruptcy proceedings, the Contract Documents shall terminate if CMAR rejects this agreement or if there has been a default under the Contract Documents, and CMAR is unable to give adequate assurances that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.
- 12.3 **CMAR'S RIGHT TO STOP WORK AND TERMINATE FOR CAUSE**
- 12.3.1 CMAR may, in addition to any other rights afforded under the Contract Documents or by law, either stop work or terminate this Agreement for cause upon Owners failure to pay an amount in excess of \$100,000 dollars properly due and not in dispute under CMAR's application for payment, provided that before taking any such action CMAR has given Owner the written notice specified in **Section 12.3.2** and the Owner has not cured within the specified seven (7) day period.
- 12.3.2 Should the events set forth in **Section 12.3.1** occur, CMAR shall provide Owner with written notice indicating that such condition set forth in **Section 12.3.1** has occurred, and it is CMAR's intention to stop work or terminate this Agreement if said event is not cured within seven (7) days from Owner's receipt of CMAR's notice. If CMAR elects to stop work, it may later indicate its intention to terminate this Agreement by providing Owner with written notice that CMAR will terminate this Agreement within seven (7) days from receipt of CMAR's notice, unless the alleged cause of termination is cured.
- 12.3.3 If CMAR elects to stop Work under **Section 12.3.1**, CMAR shall be entitled to make a claim for adjustment to the Guaranteed Maximum Price and Contract Time(s) to the extent it has been adversely impacted by the stoppage of the Work. If CMAR elects to terminate this Agreement for the reasons permitted under **Sections 12.3.1 and 12.3.2**, CMAR shall be entitled to recover the same costs it would be permitted to recover had Owner terminated this Agreement for its convenience under **Section 12.1**.
- 12.4 If the Contract is terminated for any reason, at the election of Owner which Owner may exercise as to each Subcontractor agreement individually, CMAR's agreements with its Subcontractors shall, at Owner's option and without further action by CMAR, be assigned to Owner; provided, however, that Owner shall have no liability for any pre-existing acts, omissions or defaults by CMAR under such agreements and as to such matters the sole

recourse of Subcontractors shall be against CMAR.

ARTICLE 13
MISCELLANEOUS

- 13.1 **ASSIGNMENT.** Neither CMAR nor Owner may without the written consent of the other, assign, transfer, or sublet any portion or part of the Work or the obligations required by a party under the Contract Documents.
- 13.2 **SUCCESSORSHIP.** The provisions of these General Conditions and the other Contract Documents shall be binding upon the parties, their employees, agents, heirs, successors and assigns.
- 13.3 **GOVERNING LAW.** Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, the Work and the Contract Documents shall be governed by Arizona Law, without giving effect to conflicts of law principles. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court in Maricopa County, Arizona, and only after all contractual and administrative claims, controversies, dispute and disagreement resolution procedures have been fulfilled. By submitting a proposal or its qualifications and also by executing this Agreement, CMAR agrees to be bound by Arizona Administrative code R7-2-1155- 1159 et al, containing dispute and claims procedures and waives any objections to those procedures.
- 13.4 **SEVERABILITY.** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 13.5 **NO WAIVER.** The failure of either CMAR or Owner to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the Contract Documents, shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance obligation.
- 13.6 **HEADINGS.** The headings used in the Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 13.7 **NOTICE.** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) if delivered or sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, three (3) days after mailing; (iii) if transmitted by facsimile, at the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.
- 13.8 **NON-APPROPRIATION.**
- 13.8.1 If funds either appropriated by the Legislature of the State of Arizona or otherwise allocated to perform the Work become unavailable for payments by the Owner under this Agreement, the Owner may delay the Work for a period up to six (6) months, after which date if no funds are legally available, this Agreement may be terminated by Owner at its option.
- 13.8.2 If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, the Owner may terminate this Agreement. If such a cancellation occurs, the Owner shall reimburse CMAR for services rendered and

non-cancelable commitments made prior to the termination on the same basis as if Owner had terminated for convenience under **Section 12.1**.

13.9 CONFLICT OF INTEREST.

13.9.1 This agreement is subject to the provisions of Arizona Revised Statutes **Section 38-511** and the Owner may, within three years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the Owner becomes an employee or agent in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while this Agreement or any extension hereof is in effect.

13.10 NONDISCRIMINATION.

13.10.1 In connection with the performance of Work under this Agreement, the CMAR agrees to observe all applicable Arizona and Federal Laws (including, without limitation, the Americans With Disabilities Act). CMAR further agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disability, except to the extent such discrimination is not prohibited by pertinent State or Federal law or Executive order. In addition, the CMAR agrees to actively recruit in accordance with any affirmative action programs applicable to the CMAR. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CMAR shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

13.10.2 The CMAR shall make a good-faith effort to ensure that all reasonable efforts are made to allow work performed under this Agreement to be performed by small businesses, minority owned businesses and women-owned businesses. The CMAR shall report to the Owner the value of the Work performed under this provision. Upon Owner's request, documentation evidencing CMAR's compliance with this provision shall be furnished in a format acceptable to Owner as a condition precedent to final payment.

13.11 ASSIGNMENT OF CLAIMS. The Owner and CMAR recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by Owner. Therefore, the CMAR hereby assigns to Owner any and all claims for such overcharges. The CMAR in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the Owner.

13.12 DISPUTES. Any failure of the DP's or the Owner to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of the CMAR's claim for relief.

13.13 SEXUAL HARASSMENT. The CMAR shall comply with the Owner's current policy regarding sexual harassment. The Owner prohibits sexual harassment by any person on Owner's premises or at any Owner-affiliated functions.

13.14 AMENDMENTS. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

CMAR:

ENTER NAME

OWNER:

**ORACLE SCHOOL DISTRICT
GOVERNING BOARD**

For and on behalf of

ORACLE SCHOOL DISTRICT #2

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date:

Date:

EXHIBIT A – BONDS

Note: The actual form of Performance Bond must be in the following form or in such other form as is acceptable to Owner and the surety issuing the bond.

Note: The actual form of Payment Bond must be in the following form or in such other form as is acceptable to Owner and the surety issuing the bond.

EXHIBIT A
ENTER NAME
PERFORMANCE BOND
PURSUANT TO ARIZONA ADMINISTRATIVE CODE R-2-1116 (M)
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____, (hereinafter called Principal), as Principal, and _____, a corporation holding a certificate of authority to transact surety business in this State and organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **ENTER NAME** _____.

I, (hereinafter called the Obligee) in the amount of (\$) _____ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____, to construct and complete a certain work described as _____, **XXXX ENTER PROJECT NUMBER** _____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfill all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Arizona Administrative Code R-2-1116 (M), and all liabilities on this bond shall be determined in accordance with the provisions of this section, to the extent as if copied at length herein.

The prevailing party in a suit on this bond, including any appeal thereof, shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Anything in this bond to the contrary notwithstanding, the performance covered by this bond is limited to the construction services to be performed under said contract and does not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in said contract. Terms used in this paragraph that are defined or used in Arizona Revised Statutes section 41- 2503 will have the respective definitions in that section or will be interpreted according to their use in that section, respectively.

Witness our hands this _____ day of _____, 20 _____.

Principal Seal

By

Surety Seal

By

EXHIBIT A
ENTER NAME
PAYMENT BOND
PURSUANT TO ARIZONA ADMINISTRATIVE CODE R-2-1116 (M)
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____, (hereinafter called Principal), as Principal, and _____, a corporation holding a certificate of authority to transact surety business in this state and organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **ENTER NAME**, (hereinafter called the Obligee) in the amount of _____ (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____, to construct and complete a certain work described as _____, **ENTER PROJECT NUMBER** _____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the principals or the principals, subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Arizona Administrative Code R-2-1116 (M), and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of this section, to the extent as if copied at length herein.

The prevailing party in a suit on this bond, including any appeal thereof, shall recover as a part of the judgment such reasonable attorney fees as may be fixed by a judge of the Court.

Anything in this bond to the contrary notwithstanding, the performance covered by this bond is limited to the construction to be performed under said contract and does not include the cost of any design services, pre-construction services, finance services, maintenance services, operations services or any other related services included in said contract. Terms used in this paragraph that are defined or used in Arizona Revised Statutes section 41-2503 will have the respective definitions in that section or will be interpreted according to their use in that section, respectively.

Witness our hands this _____ day of _____, 20_____.

Principal Seal

By

Surety Seal

By

SCHEDULE OF VALUES GENERIC FORMAT EXHIBIT

EXHIBIT B

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 1	GENERAL			
01-0101 GEN	Project Manager			
01-0102 GEN	Safety Coordinator			
01-0103 GEN	Project Engineer			
01-0104 GEN	Project Coordinator			
01-0107 GEN	Field Administration			
01-0110 GEN	Superintendent			
01-0170 GEN	Insurance			
01-0180 GEN	Bonds			
01-0209 GEN	Partnering			
01-0210 GEN	Temp Facilities			
01-0222 GEN	Construction Water / Meters / Electrical			
01-0410 GEN	Printing			
DIV 1	SUB-TOTAL			
DIV 2	SITWORK			
02-0117 SUB	Site Fence			
02-0120 GEN	Demolition			
02-0200 SUB	Field Eng. / Surveying / Layout			
02-0202 GEN	Utility Potholing			
02-0220 SUB	Excavation / Grading			
02-0320 SUB	Site Concrete			
02-0402 SUB	Landscaping			
02-0610 SUB	Asphalt Paving			
02-0910 GEN	Equipment Rental			
02-1010 SUB	Site Utilities			
DIV 2	SUB-TOTAL			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 3	CONCRETE			
03-0112 MAT	Concrete Material - SOG			
03-0113 MAT	Concrete Material – Walls / Cols			
03-0114 MAT	Concrete Material - SOD			
03-0210 SUB	Form & Place Structural Concrete			
03-0240 SUB	Place & Finish Flatwork			
03-0310 MAT	Rebar Material			
03-0310 SUB	Rebar Placement			
03-0380 GEN	Concrete Pumping – Walls / Slabs			
03-0404 SUB	Grout HM Frames			
DIV 3	SUB-TOTAL			
DIV 4	MASONRY			
04-0110 SUB	Masonry			
04-0300 MAT	Arch. Precast Material			
04-0400 SUB	Arch. Precast Setting			
DIV 4	SUB-TOTAL			
DIV 5	METALS			
05-0113 SUB	Structural / Arch Metals			
DIV 5	SUB-TOTAL			
DIV 6	CARPENTRY / MILLWORK			
06-0111 SUB	Rough Carpentry			
06-0120 SUB	Finish Carpentry			
06-0130 SUB	Millwork / Casework			
DIV 6	SUB-TOTAL			
DIV 7	MOISTURE PROTECTION			
07-0120 SUB	Waterproofing			
07-0200 SUB	Traffic Coatings			
07-0210 SUB	Metal Panels and Roofing			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
07-0250 SUB	Fireproofing			
07-0310 SUB	Built Up Roofing			
07-0610 SUB	Thermal Insulation			
07-0810 SUB	Caulking and Sealants			
DIV 7	SUB-TOTAL			
DIV 8	DOORS, WINDOWS, GLASS			
08-0110 SUB	Frames, Doors, Hardware			
08-0210 SUB	Storefront and Glazing			
08-0470 SUB	Overhead Doors			
DIV 8	SUB-TOTAL			
DIV 9	FINISHES			
09-0240 SUB	Studs and Drywall			
09-0310 SUB	Ceramic Tile			
09-1220 SUB	Painting			
DIV 9	SUB-TOTAL			
DIV 10	SPECIALTIES			
10-0250 SUB	Toilet Partition / Accessories			
10-1010 SUB	Fire Extinguishers / Cabinets			
DIV 10	SUB-TOTAL			
DIV 11	EQUIPMENT			
11-1610 SUB	Parking Equipment			
DIV 11	SUB-TOTAL			
DIV 12	FURNISHINGS			
12-0200				
DIV 12	SUB-TOTAL			
DIV 13	SPECIAL CONSTRUCTION			
13-0200				
DIV 13	SUB-TOTAL			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 14	CONVEYING SYSTEMS			
04-0110 SUB	Elevators			
DIV 14	SUB-TOTAL			
DIV 15	MECHANICAL			
15-0110 SUB	Plumbing			
15-0810 SUB	Fire Protection			
15-1510 SUB	HVAC System			
DIV 15	SUB-TOTAL			
DIV 16	ELECTRICAL			
16-0110 SUB	Electrical			
DIV 16	SUB-TOTAL			
DIV 17	ALLOWANCES			
17-0100 SUB	Controls			
DIV 17	SUB-TOTAL			
	SUBTOTAL COST OF WORK (BEFORE CONSTRUCTION PHASE SERVICES FEE AND EXCLUDING PRECONSTRUCTION PHASE SERVICE FEE)			
18-0001 GEN	Bidding Contingency			
19-0000 GEN	Construction Phase Services Fee (Dollar Amount) 5%			
	TOTAL CONSTRUCTION COSTS (EXCLUDING PRECONSTRUCTION PHASE SERVICES FEE)			

COST OF THE WORK FORMAT

EXHIBIT C

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 1	GENERAL			
01-0000 GEN	Pre-Construction Phase Services Fee			
01-0101 GEN	Project Manager			
01-0102 GEN	Safety Coordinator			
01-0103 GEN	Project Engineer			
01-0104 GEN	Project Coordinator			
01-0107 GEN	Field Administration			
01-0110 GEN	Superintendent			
01-0170 GEN	Insurance			
01-0180 GEN	Bonds			
01-0209 GEN	Partnering			
01-0210 GEN	Temp Facilities			
01-0222 GEN	Construction Water / Meters / Electrical			
01-0410 GEN	Printing			
DIV 1	SUB-TOTAL			
DIV 2	SITWORK			
02-0117 SUB	Site Fence			
02-0120 GEN	Demolition			
02-0200 SUB	Field Eng. / Surveying / Layout			
02-0202 GEN	Utility Potholing			
02-0220 SUB	Excavation / Grading			
02-0320 SUB	Site Concrete			
02-0402 SUB	Landscaping			
02-0610 SUB	Asphalt Paving			
02-0910 GEN	Equipment Rental			
02-1010 SUB	Site Utilities			
DIV 2	SUB-TOTAL			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
Div 3	CONCRETE			
03-0112 MAT	Concrete Material - SOG			
03-0113 MAT	Concrete Material – Walls / Cols			
03-0114 MAT	Concrete Material - SOD			
03-0210 SUB	Form & Place Structural Concrete			
03-0240 SUB	Place & Finish Flatwork			
03-0310 MAT	Rebar Material			
03-0310 SUB	Rebar Placement			
03-0404 SUB	Grout HM Frames			
DIV 3	SUB-TOTAL			
DIV 4	MASONRY			
04-0110 SUB	Masonry			
04-0300 MAT	Arch. Precast - Material			
04-0400 SUB	Arch. Precast Setting			
DIV 4	SUB-TOTAL			
DIV 5	METALS			
05-0113 SUB	Structural / Arch Metals			
DIV 5	SUB-TOTAL			
DIV 6	CARPENTRY / MILLWORK			
06-0111 SUB	Rough Carpentry			
06-0120 SUB	Finish Carpentry			
06-0130 SUB	Millwork / Casework			
DIV 6	SUB-TOTAL			
DIV 7	MOISTURE PROTECTION			
07-0120 SUB	Waterproofing			
07-0200 SUB	Traffic Coatings			
07-0210 SUB	Metal Panels and Roofing			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
07-0250 SUB	Fireproofing			
07-0310 SUB	Built Up Roofing			
07-0610 SUB	Thermal Insulation			
07-0810 SUB	Caulking and Sealants			
DIV 7	SUB-TOTAL			
DIV 8	DOORS, WINDOWS, GLASS			
08-0110 SUB	Frames, Doors, Hardware			
08-0210 SUB	Storefront and Glazing			
08-0470 SUB	Overhead Doors			
DIV 8	SUB-TOTAL			
DIV 9	FINISHES			
09-0240 SUB	Studs and Drywall			
09-0310 SUB	Ceramic Tile			
09-1220 SUB	Painting			
DIV 9	SUB-TOTAL			
DIV 10	SPECIALTIES			
10-0250 SUB	Toilet Partition / Accessories			
10-1010 SUB	Fire Extinguishers / Cabinets			
DIV 10	SUB-TOTAL			
DIV 11	EQUIPMENT			
11-1610 SUB	Parking Equipment			
DIV 11	SUB-TOTAL			
DIV 12	FURNISHINGS			
12-0200				
DIV 12	SUB-TOTAL			
DIV 13	SPECIAL CONSTRUCTION			
13-0200				
DIV 13	SUB-TOTAL			

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 14	CONVEYING SYSTEMS			
14-0110 SUB	Elevators			
DIV 14	SUB-TOTAL			
DIV 15	MECHANICAL			
15-0110 SUB	Plumbing			
15-0810 SUB	Fire Protection			
15-1510 SUB	HVAC System			
DIV 15	SUB-TOTAL			
DIV 16	ELECTRICAL			
16-0110 SUB	Electrical			
DIV 16	SUB-TOTAL			
DIV 17	ALLOWANCES			
17-0100 SUB	Controls			
DIV 17	SUB-TOTAL			
DIV 18	BIDDING CONTINGENCY			
18-0001 GEN	Bidding Contingency			
DIV 18	SUB-TOTAL			
DIV 19	CONSTRUCTION PHASE SERVICES FEE			
19-0000 GEN	Dollar Amount of the Fee			
DIV 19	SUB-TOTAL			
	GUARANTEED MAXIMUM PRICE			

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

for

MOUNTAIN VISTA SCHOOL

RECONFIGURATION OF MOUNTAIN VISTA SCHOOL SITE
CIRCULATION AND PARKING AREAS; SITE DRAINAGE
IMPROVEMENTS; ADA ACCESSIBILITY UPGRADES AND
OTHER SITE WORK DETERMINED BY THE DISTRICT

Oracle School District No. 2

and

ENTER CONTRACTOR NAME

EXHIBIT D – CONSTRUCTION BUDGET

The Construction Budget is not to exceed:

- **\$XX,XXX,XXX**

Oracle School District #2 desires to have the scope of work described within Exhibit D,
Scope of Work designed and constructed within the **\$XX,XXX,XXX** construction budget.

CONSTRUCTION MANAGER AT RISK
for
MOUNTAIN VISTA SCHOOL
NEW CLASSROOM BUILDING AND
SCHOOL UPGRADES, IMPROVEMENTS, AND RENOVATION

between
Oracle School District No. 2
and
ENTER CONTRACTOR NAME

EXHIBIT E – SCOPE OF WORK

The Project Scope of Work shall be performed in accordance with all provisions included in the Agreement for Pre-Construction and Construction Phase Services (including all Exhibits). The Scope of Work for this project includes the following subject to change by the Owner:

Providing pre-construction and construction phase CMAR services for:

MOUNTAIN VISTA SCHOOL

- Reconfiguration of site circulation
- Site drainage improvements
- ADA accessibility upgrades
- Other site work as determined necessary by the District

CONSTRUCTION MANAGER AT RISK
for
MOUNTAIN VISTA SCHOOL

RECONFIGURATION OF MOUNTAIN VISTA SCHOOL SITE CIRCULATION AND PARKING AREA; SITE DRAINAGE IMPROVEMENTS; ADA ACCESSIBILITY UPGRADES AND OTHER SITE WORK DETERMINED BY DISTRICT

between
Oracle School District No. 2
and
ENTER CONTRACTOR NAME

EXHIBIT F – MASTER SCHEDULE

The Master Schedule for the ENTER PROJECT NAME shall include the following milestone dates governing the project:

Construction Document Phase (Completion)	XXXXXX XXXX
Governing Board Approval for GMP	XXXXXX XX, XXXX
Construction Phase	
Commence Construction	XXXXXX XX, XXXX
Substantial Completion	XXXXXX XX, XXXX
Final Completion	XXXXXX XX, XXXX

A detailed Construction Phase schedule shall be completed by the CMAR firm.

CONSTRUCTION MANAGER AT RISK

for

MOUNTAIN VISTA SCHOOL

RECONFIGURATION OF MOUNTAIN VISTA SCHOOL SITE CIRCULATION AND PARKING
AREA; SITE DRAINAGE IMPROVEMENTS; ADA ACCESSIBILITY UPGRADES AND OTHER
SITE WORK DETERMINED BY DISTRICT

between

Oracle School District No. 2

and

ENTER CONTRACTOR NAME

**EXHIBIT G – REIMBURSABLE EXPENSES
(PRE-CONSTRUCTION PHASE)**

In addition to the Preconstruction Services provided within the Agreement an additional amount for reimbursable expenses is included as follows:

Reimbursable Expenses

\$X,XXX (not to exceed)

Reimbursable expenses are **ENTER DESCRIPTION**. All reimbursable expense amounts shall be shown separately in the CMAR's invoices and shall include appropriate back-up documentation for the amount expended.