

**EAST FORK SWINNING POOL DISTRICT**  
**MINDEN, DOUGLAS COUNTY, NEVADA**

**EXHIBIT "A"**  
**GENERAL CONDITIONS**

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**EXHIBIT "A"**  
**GENERAL CONDITIONS**

**1.0 DEFINITIONS**

- 1.1 Access Road – The right-of-way, the roadway and all improvements constructed thereon connecting the Jobsite to a public highway.
- 1.2 Addenda – Written or graphic instruments issued by OWNER during the bidding process. Addenda will become part of the Contract Documents when the Contract is executed. CMAR (and its Subcontractors), upon receiving Addenda, shall insert same into the base bid documents.
- 1.3 An Additive or Deductive Bid Item – An amount stated in the GMP to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the GMP documents, is accepted by OWNER. Additive Alternate Items may be exercised by OWNER with the award of the project. Award may be for only the Base Bid, Base Bid plus Additive Alternate(s), Base Bid minus Deductive Alternate(s), or a combination of Base Bid plus Additive Alternate(s) minus Deductive Alternate(s).
- 1.4 Advertisement – A public announcement, as required by local law, inviting Statement of Qualifications for work to be performed and materials to be furnished.
- 1.5 Architect – The Architect contracted by OWNER to perform design and engineering work for OWNER.
- 1.6 ASTM – The American Society for Testing and Materials.
- 1.7 Award – The acceptance, by OWNER, of CMAR's GMP for construction services.
- 1.8 Calendar Day – Every day on the calendar including day one, NTP, to and including Substantial Completion of all the work to be performed. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.
- 1.9 Certificate of Substantial Completion – This Certificate may be issued upon successful completion of Milestone(s) and/or specific portions of the Work that OWNER requested for early occupancy.
- 1.10 CMAR's Fee – CMAR's Fee for Overhead and Profit, as included in the cost proposal, shall include the following items:
  - 1.10.1 Salaries and other mandatory or customary compensation of CMAR's employees at its principal and branch offices, except employees assigned to the Project at the principal office. Specifically excluded are the project manager, project engineer, project coordinator, and project estimator (listed under General Conditions).
  - 1.10.2 General and administrative expenses of CMAR's principal and branch offices other than the field office. Specifically excluded are materials and equipment utilized at the Jobsite.
  - 1.10.3 CMAR's capital expenses, including interest on CMAR's capital employed for the Work.
  - 1.10.4 Costs for warranty work and coordination.
  - 1.10.5 CMAR's profit

- 1.10.6 CMAR's Fee shall not include any costs due to the fault or negligence of CMAR, subcontractors, anyone directly or indirectly employed by CMAR or subcontractors, or for whose acts CMAR or subcontractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good all damage to property not forming part of the work.
- 1.11 CMAR's General Conditions – The term "General Conditions" shall mean indirect costs incurred by CMAR in the proper performance of the work, and shall be itemized as a lump sum amount and billed based upon the percentage complete of the entire Work. Within the GMP limits established within the Construction Contract, OWNER agrees to reimburse CMAR for the General Conditions as defined herein.
- 1.11.1 Salaries of CMAR's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing jobsite functions while located at the principal office; including CMAR's project manager, project engineer, project coordinator, and project estimator.
- 1.11.2 Employee benefits and taxes including, but not limited to, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under CMAR's standard personnel policy, insofar as such costs are actually paid to employees of CMAR who are engaged in the Work.
- 1.11.3 Reasonable transportation, travel, and hotel expenses for CMAR's personnel incurred in connection with the Work.
- 1.11.4 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the specified field office(s).
- 1.11.5 Costs for reproduction, photographs, fax transmissions, long distance telephone calls, data processing services, postage, express delivery charges, on-site telephone service, and reasonable petty cash expenses at CMAR's field office.
- 1.11.6 Costs (including transportation and maintenance) of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by workers) that are used or consumed in the performance of the Work by CMAR's employees listed above in this Article.
- 1.11.7 Costs of obtaining and using all water, power and fuel necessary for the Work, if not paid directly by OWNER.
- 1.11.8 Costs for removal of all generated non-hazardous substances, debris, and waste materials.
- 1.11.9 Costs incurred by CMAR due to any emergency affecting the safety of persons and/or property.
- 1.11.10 Costs related to CMAR's safety program.
- 1.11.11 Costs indirectly incurred in the performance of the Work or in connection with the Project, and not included in CMAR's Fee, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

- 1.12 Construction Change Directive (CCD) – A written directive to CMAR, signed by OWNER and Architect, which shall serve as formal and binding direction for CMAR to proceed with a defined change in the Work. The directive may be implemented when deemed necessary as an interim action until a Contract Change Order can be formally assessed and executed. Upon receipt of a CCD, CMAR shall promptly proceed with the directed changes.
- 1.13 Contract – The written agreement covering the Work to be performed. The awarded Contract shall include the Contract Documents as listed in Article 7 of the executed Construction Management At Risk Contract for Construction.
- 1.14 Contract Change Order (CCO) – The conforming document which formally establishes the total Contract value and/or Substantial Completion Date. A CCO is an amendment to the OWNER-CMAR Construction Contract and is a written order to CMAR signed by OWNER and CMAR, which is issued after the execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time.
- 1.15 Contract Change Request (CCR) – A formal request to OWNER, initiated by CMAR by submittal of a Request For Contract Change (RFCC), to propose a change to the Contract and, once approved, will authorize payment for the approved change.
- 1.16 Contract Control Schedule (CCS) – The schedule developed by CMAR designed to provide the control level guideline of contract execution for the duration of Contract.
- 1.17 Contract Item (Pay Item) – A specific unit of work for which a price is provided in the Contract.
- 1.18 Contract Sum – The total compensation payable to CMAR for performing the Work, subject to modification by Contract Change Order.
- 1.19 Contract Time – The number of calendar days stated in the proposal, allowed for completion of the Contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the Contract shall be completed by that date.
- 1.20 CONSTRUCTION MANAGER AT RISK (CMAR) – The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the Work contracted and for payment of all legal debts pertaining to the Work who acts directly or through lawful agents or employees to complete the Work. CMAR is not responsible for providing, nor does CMAR control, the Project design and contents of the design documents.
- 1.21 Cost of the Work – The term “Cost of the Work” shall mean actual costs necessarily incurred by CMAR in the proper performance of the work. Within the GMP limits established within the Construction Contract, OWNER agrees to reimburse CMAR for the Cost of the Work as defined herein.
- 1.21.1 Wages paid for labor in the direct employ of CMAR in the performance of the Work. Labor rates, including fringe benefits, shall be in conformance with the applicable Prevailing Wage Rates as published by the Nevada State Labor Commission for this project.
- 1.21.2 Cost of all materials, supplies, and equipment incorporated in the Cost of the Work, including costs of certificates of inspection and testing, transportation, storage, and handling.
- 1.21.3 Costs of materials billed to OWNER in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess, billed

materials, if any, shall be handed over to OWNER at the completion of the work or, at OWNER's option, shall be sold by CMAR. Any amounts realized from such sales shall be credited to OWNER as a deduction from the Cost of the Work.

- 1.21.4 Costs to receive, store and install any OWNER furnished equipment or materials as called for in this Contract.
- 1.21.5 Payments made by CMAR to the Subcontractors and suppliers for the Cost of the Work performed under the Contract.
- 1.21.6 Does not include the cost of fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded by CMAR Contract for Construction – Exhibit "A", Article 32.0 TESTING, or other provisions of the Contract Documents.
- 1.21.7 Rental charges for all necessary machinery and equipment, exclusive of hand tools owned by workers, used for the Work, whether rented from CMAR or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs at rates consistent with those prevailing in the area.
- 1.21.8 Sales, use, gross receipts or other taxes, tariffs or duties related to the Cost of the Work for which CMAR is liable.
- 1.21.9 All discounts for prompt payment, volume buying, all trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.
- 1.21.10 Deposits lost for causes other than CMAR's fault or negligence.
- 1.22 Defective – Refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior final payment of the Contract.
- 1.23 Drainage System – The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the Project area.
- 1.24 Drawings – The official drawings or exact reproductions, approved by OWNER, which show the location, character, dimensions and details of the Project and the Work to be done and which are to be considered as part of the Contract.
- 1.25 Equipment – All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.
- 1.26 Final Completion – When the Work in the Contract is complete in accordance the Contract Documents, as modified by any contract changes, and OWNER accepts the Work as being complete.
- 1.27 Guaranteed Maximum Price (GMP) – An open-book contract where CMAR is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. CMAR is responsible for cost overruns, unless the GMP has been increased via formal Contract Change Order (only as a result of additional scope from OWNER, not price overruns). Savings resulting from cost savings are split between OWNER and CMAR per Contract ARTICLE 4.

- 1.28 Jobsite – The location where construction activity is performed under this Contract.
- 1.29 Inspector – A representative of OWNER, assigned to make all necessary inspections and/or tests of the Work performed or being performed, or of the material furnished or being furnished by CMAR. The Inspector may be the Project Manager in certain circumstances.
- 1.30 Intention of Terms – Whenever, in these specifications or on the plans, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of the like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of OWNER is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to OWNER, subject in each case to the final determination of OWNER.
- 1.30.1 "At CMAR'S expense" or "to CMAR's account" shall mean that the costs incurred by CMAR in performing any work or for furnishing any material or equipment will not be reimbursed by OWNER.
- 1.30.2 Any reference to a specific requirement of a numbered paragraph of the Technical Specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such reference.
- 1.31 Labor and Material Payment Bond – The approved form of security furnished by CMAR and its surety as a guaranty that it will pay in full all bills and accounts for materials and labor used in the construction of the Work.
- 1.32 Laboratory – The official testing laboratories of OWNER or such other laboratories as may be designated by OWNER.
- 1.33 Latent Defect – A hidden or concealed deficiency or fault in the Work, which OWNER, until its discovery, has no knowledge, or which, in the exercise of reasonable care, OWNER could have had no knowledge.
- 1.34 Materials – Any substance specified for use in the construction of the Work.
- 1.35 Milestone – A scheduled event signifying the completion of a deliverable or a related set of deliverables.
- 1.36 Mobilization – Preparatory work, furnishing required submittals and performing operations to commence project work, including but not limited to, all work necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, buildings, safety equipment, sanitary, and other facilities, as required by the Contract, State and local laws and regulations.
- 1.37 Monthly Progress Pay Estimate – The means by which CMAR applies for and receives approval of its monthly payments for work accomplished to date.
- 1.38 Nevada Revised Statutes (NRS) – The current codified laws of the State of Nevada; for purposes of contractual obligations, this definition will encompass the Nevada Revised Statutes, the Statutes of Nevada and the Nevada Administrative Code (NAC).
- 1.39 Non-Compliance Reports (NCR) – The document that informs CMAR of any CMAR infraction of the Contract Documents that negatively affects cost, scheduling, or quality of work.
- 1.40 Notice of Award – A written notice to CMAR from OWNER notifying CMAR that a Contract for the Work now exists between OWNER and CMAR.

- 1.41 Notice To Proceed (NTP) – A written notice to CMAR to begin the actual Contract Work on a specified date. If applicable, the NTP shall state the date on which the Contract time begins.
- 1.42 OWNER – OWNER is East Fork Swimming Pool District Board of Trustees as represented by its designee. Where the word "approval" is mentioned, approval shall mean action by the Board of Trustees or its Chief Director. The term OWNER shall also mean the contracting agency signatory to the Contract.
- 1.43 Pavement – The combined surface course, base course, and sub base course, if any, considered as a single unit.
- 1.44 Performance Bond – The approved form of security furnished by CMAR and its surety as a guaranty that CMAR will complete the Work in accordance with the terms of the Contract.
- 1.45 Project – The agreed scope of work with respect to referenced project name and Jobsite specified in the Contract.
- 1.46 Project Manager – The individual nominated by OWNER to act on behalf of OWNER for the day to day activities during the course of the Contract.
- 1.47 Proposal – A complete and properly signed offer to do the Work or designated portion thereof for the sums stipulated therein submitted in accordance with the Bidding Documents.
- 1.48 Punch List – A list, made near the Substantial Completion of the Work, that indicates items to be finished or the Work to be performed by CMAR or Subcontractor in order to complete the Work as specified in the Contract Documents.
- 1.49 Quantity Adjustment (QA) – This is a system for adjusting the estimated quantities displayed in the Bid Form (unit price contract), as a field count determines actual quantities.
- 1.50 Quantity Verification – The method by which CMAR quantifies the amount of work accomplished during the current billing period for a particular work activity.
- 1.51 Request for Contract Change (RFCC) – Formal method of notification to request a change in Contract scope.
- 1.52 Request for Information (RFI) – Formal means of requesting information/clarification regarding Contract requirements.
- 1.53 Samples – samples are physical examples furnished by CMAR to illustrate materials, equipment, finishes, or workmanship, and to establish standards by which the Work will be judged.
- 1.54 Structures – OWNER facilities such as culverts; catch basins; inlets; retaining walls; cribbing; storm and sanitary sewer lines; water lines; under drains; electrical ducts, manholes, hand holes, lighting fixtures and bases; transformers; flexible and rigid pavements; buildings; vaults; and, other manmade features of the Project that may be encountered in the Work and not otherwise classified herein.
- 1.55 Subcontractor means a person who:
- 1.55.1 Is licensed pursuant to the provisions of Chapter 624 of NRS or performs such work that he is not required to be licensed pursuant to Chapter 624 of NRS; and
- 1.55.2 Contracts with a CMAR, another Subcontractor or a supplier to provide labor,

material or services for a construction project.

- 1.56 Subgrade – The soil that forms the pavement foundation.
- 1.57 Submittals and Shop Drawings – Submittals and shop drawings are drawings, diagrams, illustrations, performance charts, brochures, samples, and other data which are prepared by CMAR or any Subcontractor, manufacturer, supplier, or distributor which illustrate some portion of the Work.
- 1.58 Substantial Completion – The stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that OWNER can occupy and/or utilize the Work (or portion thereof) for its intended use.
- 1.59 Supplemental Agreement – A written agreement between CMAR and OWNER covering work that is requested by OWNER which is not related to the scope of the originally awarded Contract. The cost of this work shall be priced by CMAR in accordance with **Article 12.0 - CHANGES**.
- 1.60 Surety – The corporation, partnership, or individual, other than CMAR, executing a Bid Payment, Performance or Guaranty Bonds which are furnished to OWNER by CMAR.
- 1.61 Technical Specifications – A part of the Contract containing the written directions and requirements for completing the Work. Standards for specifying materials or testing, which are cited in the Technical Specifications by reference, shall have the same force and effect as if included in the Contract physically.
- 1.62 Work – Includes, but is not limited to the furnishing of all labor, materials, equipment, tools, supplies and incidentals and the installation of all materials and equipment necessary to fully and completely accomplish all duties and obligations imposed by the Contract.
- 1.63 Work Day – A working day shall be any day on which the normal working forces of CMAR may proceed with regular work for at least six (6) hours toward completion of the Contract.

## **2.0 CMAR BIDDING PROCEDURES**

Before starting Work, CMAR shall document, and disclose to OWNER all bidding and contracting procedures utilized in negotiating with and contracting with the subcontractors and suppliers.

CMAR shall have obtained a minimum of three (3) bids on all items of Work unless a lesser number of bids is deemed acceptable and is approved by OWNER and allowable under Nevada Revised Statute.

CMAR shall demonstrate to the satisfaction of OWNER that it has adequate previous experience on any Work that it intends to self-perform and shall also provide evidence that its proposed cost for such Work is lower than the other bids received for that Work.

CMAR duly acknowledges that it has complied with all applicable state laws governing bidding procedures associated with this project, and more specifically with a CMAR project as defined by Nevada Revised Statute.

## **3.0 AUTHORIZED REPRESENTATIVES**

Before starting Work, CMAR shall designate a competent, authorized representative acceptable to OWNER to represent and act for CMAR and shall inform OWNER, in writing, of the name and

address of such representative together with a clear definition of the scope of his authority to represent and act for CMAR and shall specify any and all limitations of such authority. CMAR shall keep OWNER informed of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the site of Work at all times when Work is actually in progress. During periods when Work is suspended, arrangements for an authorized representative acceptable to OWNER shall be made for any emergency work, which may be required. All notices, determinations, instructions and other communications given to the authorized representative of CMAR shall be binding upon CMAR.

Before starting Work, OWNER shall designate, in writing, a Project Manager to be the point of contact for OWNER. OWNER will notify CMAR in writing of the name of such representative, the representative's limits of authority and any subsequent changes. At all times when work is being performed under the Contract, there will be available a competent Project Manager who will have authority to act for OWNER within the scope of his authority, and to receive communications from CMAR.

#### **4.0 CONTRACT EXECUTION**

##### **4.1 General:**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between OWNER and CMAR and supersedes all prior negotiations, representations or agreements, either written or oral.

The Contract shall not be binding on either OWNER or CMAR until OWNER-CMAR Construction Contract and the Performance and Payment Bonds have been properly executed and submitted, and OWNER-CMAR Construction Contract has been approved and signed by OWNER or its designated representative.

Execution of OWNER-CMAR Construction Contract shall constitute CMAR's representation, under penalty of perjury, that CMAR has carefully examined the contents of all Contract Documents, which it has read and understands the same, and specifically agrees to be bound thereby. Additionally, execution of OWNER-CMAR Construction Contract by CMAR shall represent that it has inspected the site, familiarized itself with all local conditions, laws, and regulations under which the Work is to be performed and has correlated this knowledge with the requirements of the Contract Documents.

The Contract Documents shall not be construed to create a contractual relationship of any kind between Architect and CMAR, between OWNER and a Subcontractor, or between any persons or entities other than OWNER and CMAR. Architect shall, however, have authority to act on behalf of OWNER, to the extent provided in the Contract Documents.

The laws of the State of Nevada and the applicable rules and regulations of its departments, agencies, and institutions shall govern the Project and the Work. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein, and the Contract shall be read and enforced as though such provision were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be physically amended to make such insertion or correction.

The Contract Sum is the sum stated in OWNER-CMAR Construction Contract and is the total dollar amount payable by OWNER to CMAR for the complete and approved performance of the Work in strict accordance with the Contract Documents.

##### **4.2 Laws and Regulations:**

The Contract shall be administered and interpreted under the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the Ninth

Judicial District Court, Minden, Nevada for enforcement of this Contract. This Contract shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Contract is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Contract shall remain in full force and effect.

CMAR and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules or regulations in effect at the time Work is performed under this Contract.

If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Contract which become effective and which affect the cost or time of performance of the Contract, CMAR shall immediately notify OWNER in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract. Upon concurrence by OWNER as to the effect of such changes an adjustment in the compensation and/or time of performance will be made in accordance to Article 12.0 – CHANGES and Exhibit “B” – Compensation Conditions, Article 3.0 – PRICING OF CHANGES.

If CMAR discovers any discrepancy or inconsistency between this Contract and any law, ordinance, statute, rule, regulation, order or decree, CMAR shall immediately notify OWNER in writing.

4.3 Execution of the Contract:

CMAR is to execute two originals of the Contract, attach the Bonds and Certificates of Insurance and forward the same to OWNER.

If all the data submitted by CMAR under this Article is in accordance with the Contract Documents, OWNER shall have the Contract executed.

If CMAR fails to furnish all Bonds and Insurance Certificates within ten (10) days of the Notice of Award of Contract, OWNER reserves the right to reclassify CMAR’s Proposal as non-responsive and OWNER may then bid the Contract per NRS 338.1696.

4.4 Bond Requirements:

4.4.1 CMAR shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as OWNER may prescribe in accordance with the provisions of NRS 339.025. Bonds may be secured through CMAR’s usual sources provided the surety must be authorized to do business in the State of Nevada.

4.4.2 Contract Required Bonds:

4.4.2.1 Labor and Material Payment Bond in the amount of 100% of the Contract price.

4.4.2.2 Performance Bond in the amount of 100% of the Contract price.

4.4.2.3 Sureties Agreement to provide Guaranty Bond in the amount of 100% of the Contract price upon Notice of Completion of the Work.

4.4.3 Form of Bonds:

4.4.3.1 The bonds shall be written on Performance Bond and Labor and Material Payment Bond Forms provided by OWNER.

4.4.3.2 CMAR shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

4.5 Signature Set of Contract Documents:

Prior to commencement of Work, a complete set of conformed Contract Documents shall be examined by CMAR and OWNER for accuracy. This set of documents shall then be bound and sealed. CMAR and OWNER shall sign and date a cover sheet that lists the contents of the bound and sealed package.

This set of signed conformed Contract Documents will be held by OWNER for use as reference in the event of any conflict arising from the Contract Documents. OWNER and CMAR shall both be present in the event the bound and sealed package is ever opened.

4.6 Pre-Construction Conference:

OWNER will call a Pre-Construction Conference prior to issuance of NTP to CMAR.

The purpose of the Pre-Construction Conference will be to review various requirements of the Contract Documents, including safety and security.

CMAR shall be represented at this meeting to include CMAR's Authorized Representative, Project Manager, Superintendent, Schedule Manager and Safety and Quality Representatives.

4.7 Pre-Activity Meetings:

CMAR shall conduct a separate, on-site meeting with each Subcontractor and/or CMAR personnel on work to be accomplished by CMAR direct hire forces prior to commencement of the activity for the purpose of reviewing the Contract Documents. If a Subcontractor is engaged in several work activities or if CMAR is engaged in several direct hire activities, a meeting shall be conducted for each activity. OWNER shall be invited to each meeting.

No CMAR or Subcontractor work activity shall be included in a monthly Progress Pay Estimate until the above meetings have taken place.

4.8 Notice to Proceed:

When all the preceding conditions of this Article have been fulfilled, OWNER will issue NTP to CMAR.

**5.0 POST-AWARD**

CMAR shall include Exhibit "A" – General Conditions and Exhibit "B" – Compensation Conditions contained in Volume One of the Contract Documents in its contract with each Subcontractor working on this project.

CMAR shall not substitute any Subcontractor or person for a Subcontractor who is named in the Contract, unless:

- (A) OWNER objects to the Subcontractor, requests in writing a change in the Subcontractor and pays any increase in costs resulting from the Change; or
- (B) The substitution is approved by OWNER and is limited to the conditions allowed under state law. CMAR shall be responsible for any increase in costs as a result of such approved substitution.

CMAR shall re-issue the Disclosure of Ownership/Principals Form (Exhibit "C" – Addenda, ATTACHMENT 1 – DISCLOSURE OF OWNERSHIP FORM) if, at any time during the Contract period, there are changes to the form, i.e., individuals are added to, or taken off, the list.

CMAR shall ensure that all subcontractors hold a state business license issued pursuant to NRS Chapter 76 as required under NRS 338.072.

## **6.0 CONTRACT INTERPRETATION**

All questions or disputes CMAR may have concerning interpretation or clarification for the acceptable fulfillment of this Contract, and all disputes applicable under Article 58.0 – TERMINATION FOR DEFAULT, Article 7.0 – DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES, or Article 22.0 – DIFFERING SITE CONDITIONS, shall be submitted immediately in writing to OWNER for resolution.

OWNER shall render a decision resolving the question or dispute (hereafter "resolution") within thirty (30) calendar days, after receipt of the submission from CMAR. The resolution shall be considered final and conclusive. CMAR is obligated to proceed in a timely manner with the resolution therein.

If CMAR does not agree with the resolution, CMAR shall proceed in accordance with Article 6.1 - Claims and Disputes.

OWNER may, in its discretion, issue to CMAR, a clarification to the Contract. CMAR is obligated to proceed in a timely manner with the clarification included therein.

If CMAR does not agree with the clarification, CMAR shall proceed in accordance with Article 6.1 - Claims and Disputes.

CMAR is solely responsible for submitting instructions or interpretations and is solely liable for any cost and/or expense arising from its failure to do so. At all times, CMAR shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and any resolution or clarification, pending conclusion of any dispute.

### **6.1 Claims and Disputes**

If CMAR disagrees with any resolution or clarification made by OWNER; if CMAR decides that work has been undertaken or cost has been incurred, that is outside scope of work of the Contract, CMAR shall file a claim with OWNER within thirty (30) calendar days after the resolution or clarification was rendered, or the work or cost was undertaken by CMAR.

All claims presented by CMAR shall include the following documentation in support of claims:

- 6.1.1 Specific provisions of the Contract that are pertinent to the claim.
- 6.1.2 A full description of the claim, with a narrative to support CMAR's position.
- 6.1.3 All costs associated with the claim shall be detailed as in Article 12.0 – CHANGES and Exhibit "B" Compensation Conditions, Article 3.0 – PRICING OF CHANGES.
- 6.1.4 All time extensions associated with claim shall be detailed as in Article 12.0 – CHANGES and Exhibit "B" Compensation Conditions, Article 3.0 – PRICING OF CHANGES.
- 6.1.5 Supporting documentation to substantiate claim, including schedules, graphs, charts, photographs and any other pertinent documentation or information.

- 6.2 Failure by CMAR to furnish all preceding data or to file Claim within specified thirty (30) calendar days shall constitute a waiver of claim by CMAR.
- 6.3 OWNER shall have thirty (30) calendar days after receipt of the claim, to respond to CMAR. OWNER response shall be considered final and conclusive unless CMAR files a written appeal to OWNER within thirty (30) calendar days of receipt of the response. CMAR's appeal shall state clearly and in detail the basis thereof.
- 6.4 OWNER shall consider CMAR's appeal and render a final decision thereon within thirty (30) calendar days of receipt of CMAR's appeal. If OWNER's final decision is not acceptable to CMAR, the matter shall be resolved through good faith negotiations between both parties. If, through good faith negotiations, the claim is not resolved within thirty (30) calendar days after OWNER's final decision, either Party may request mediation before any party commences litigation.
- 6.5 Any and all disputes of any kind that may arise between OWNER and CMAR under the Contract Documents that cannot initially be resolved to the satisfaction of both parties shall be submitted first to mediation to be conducted in a location that is agreeable to both parties utilizing the services of a mediator who is acceptable to both parties. All fees of the mediator and related costs associated with mediation shall be split and paid equally by the parties.
- 6.6 In the event that the parties agree to forego mediation of their dispute(s), or that mediation is unsuccessful, then all disputes between them of any kind or nature arising out of or under the terms of the Contract, or the Contract Documents, or the performance of the Contract, and which arose prior to the termination of the guarantee period specified in the Contract, shall be determined exclusively by and through mandatory, binding arbitration conducted in Douglas County, Nevada (unless the parties agree upon a different location) pursuant to the Nevada Uniform Arbitration Act of 2000, NRS 38.276 et seq., (the "Act").
- 6.7 The parties shall, by agreement between them if possible, select one (1) person as arbitrator who has substantial experience in the area(s) of the disputed issues(s). If they cannot agree upon an arbitrator, either party may apply pursuant to NRS 38.226 to the Ninth Judicial District Court of the State of Nevada in Minden, Douglas County, Nevada to appoint an arbitrator. The arbitrator selected by either method shall have all of the powers set forth in the Act, and shall enter an award at the conclusion of the proceedings, including an award of reasonable attorney's fees and costs to the prevailing party. In no event, however, may the award include any tort or punitive damages. The arbitrator's fee and the cost of the arbitration proceeding itself shall initially be divided equally between the parties, but the arbitrator may award all or any part of the fee and costs of the proceeding to the prevailing party in his/her reasonable discretion.

## **7.0 DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES**

Any conflicts or discrepancies, errors or omissions among the various Contract Documents shall be submitted immediately by CMAR to OWNER for clarification, under Article 6.0 – CONTRACT INTERPRETATION, and such clarification by OWNER shall be final. Any work affected by such conflicts, discrepancies, errors or omissions which is performed by CMAR prior to clarification shall be at CMAR's risk and expense.

Local code requirements shall be standard except where the drawings and specifications dictate a more stringent requirement. Where conflicts exist, the most stringent requirements shall apply.

## **8.0 INSURANCE**

- 8.1 During the term of this Contract, CMAR shall provide insurance as follows:

#### 8.1.1 WORKERS' COMPENSATION

8.1.1.1 CMAR shall maintain workers' compensation and employers liability insurance for all its employees who will be engaged in the performance of the contract, including special coverage extensions where applicable.

8.1.1.2 CMAR shall maintain statutory limits of state industrial and occupational disease insurance for employees engaged on or at the site of the project in accordance with Chapters 616A to 616D, inclusive, and 617 of Nevada Revised Statutes.

8.1.1.3 The commercial umbrella and/or employers liability limits shall not be less than **\$1,000,000** each accident for bodily injury by accident or **\$1,000,000** each employee for bodily injury by disease.

8.1.1.4 CMAR waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by CMAR pursuant to **Section 8.2.3** of this agreement.

The policy shall include an endorsement waiving the insurance company's rights of subrogation against the Owner. This endorsement shall be at least as broad as National Council on Compensation Insurance (NCCI) Waiver of Our Right to Recover from Others Endorsement form WC 00 03 13.

#### 8.1.2 AUTOMOBILE LIABILITY

8.1.2.1 CMAR shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 combined single limit of liability for bodily injury and property damage each accident.

8.1.2.2 Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

8.1.2.3 Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

8.1.2.4 CMAR waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CMAR pursuant to this Agreement.

#### 8.1.3 COMMERCIAL GENERAL LIABILITY

8.1.3.1 CMAR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with total limits of not less than **\$7,000,000** each occurrence and **\$9,000,000** general aggregate.

8.1.3.2 If such CGL insurance contains a general aggregate limit, it shall apply separately to this project.

8.1.3.3 GL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors and subcontractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

8.1.3.4 Additional Insured:

8.1.3.4.1 Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 11/85 or a substitute providing equivalent coverage, and under the commercial umbrella, if any; OR

8.1.3.4.2 Owner shall be included as an insured under the CGL, using ISO additional insured endorsements CG 20 10 and CG 20 37 or their equivalent, including coverage for Owner with respect to liability arising out of the completed operations of CMAR.

8.1.3.5 Completed operations coverage shall be maintained in effect for the benefit of Owner for a period of two (2) years following the completion of the work specified in [Section 1.62](#) of this contract.

8.1.3.6 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Owner.

8.1.3.7 The status of Owner as an insured under a CGL obtained in compliance with [Section 8.1.3.4](#) of this agreement shall not restrict coverage under such CGL with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to Owner.

8.1.3.8 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, employment-related practices, or damage to the named insured's work.

8.1.3.9 Electronic Data Liability:

8.1.3.9.1 CMAR shall maintain electronic data liability insurance applicable to the Project and insuring against liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than \$1,000,000.

#### 8.1.4 POLLUTION LIABILITY

8.1.4.1 CMAR shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents that arise from the operations of the CMAR described under the scope of services of this contract.

8.1.4.2 Insurance as required above shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an

amount of at least \$1,000,000 per claim, with an annual aggregate of at least \$2,000,000.

8.1.4.3 The policy of insurance as required above shall include as an additional insured the Owner, its subsidiaries, officers, and employees.

8.1.4.4 If coverage as required above is written on a claims-made basis, the CMAR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the contract is completed.

8.1.4.5 If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, the CMAR must furnish to the Owner evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the Owner under this paragraph 1.7 must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$2,000,000.

#### 8.1.5 PROFESSIONAL LIABILITY / ERRORS & OMISSIONS

8.1.5.1 CMAR shall obtain Professional Liability Insurance when DCSD is the beneficiary of the CMAR's service or advice. This coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service or product sold by the CMAR. These are potential causes for legal action that would not be covered by a more general liability insurance policy which addresses more direct forms of harm.

8.1.5.2 CMAR shall maintain professional liability (errors & omissions) insurance with total limits of not less than \$3,000,000 each claim or wrongful act.

8.1.5.3 Professional liability insurance shall cover liability arising out of wrongful acts, including any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission committed solely in connection with the CMAR's professional services.

8.1.5.4 If professional liability insurance is written on a claims-made or claims-made and reported coverage form, any Retroactive or Pending & Prior Exclusion Dates shall be prior to the effective date of any services provided under this Agreement.

8.1.5.5 CMAR will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of completion of the construction of the project unless waived by the Owner.

8.1.5.6 In the event that the CMAR goes out of business during the term of this Agreement or the three (3) year period described above, CMAR shall purchase at the request and expense of the Owner, if available, Extended Reporting Coverage for claims arising out of the CMAR'S negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

#### 8.1.6 BUILDERS RISK

- 8.1.6.1 Owner is responsible to obtain Builders Risk insurance for any project equal to or less than \$5,000,000. CMAR shall obtain insurance of the types and in the amounts described below for any projects over \$5,000,000.
- 8.1.6.2 CMAR shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum plus any subsequent modifications of the contract sum. The insurance shall apply on a replacement cost basis. CONTRACTOR shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum plus any subsequent modifications of the contract sum through Change Orders. The insurance shall apply on a replacement cost basis.
- 8.1.6.3 The insurance as required above shall, at a minimum, cover the causes of loss insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse, including collapse resulting from design error.
- 8.1.6.4 The insurance as required above shall name as insureds the Owner, CMAR, and all subcontractors and sub-subcontractors in the work.
- 8.1.6.5 The insurance policy shall contain a provision that the insurance will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner.
- 8.1.6.6 The insurance as required above shall cover the entire work at the site identified in Sections 1.28 and 1.45 including reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.
- 8.1.6.7 CMAR shall purchase and maintain equipment breakdown/boiler and machinery insurance required by the contract documents or by law, covering insured objects during installation and until final acceptance by Owner. This insurance shall name as insureds Owner, CMAR, and all subcontractors and sub-subcontractors in the work.
- 8.1.6.8 Any deductible applicable to the insurance purchased by CMAR in compliance with these requirements shall be identified in the contract documents and responsibility for paying the part of any loss not covered because of the operation of such deductibles shall be apportioned among the contracting parties in accordance with Section 8.1.6.9 below. If any part of a loss is not covered because of the application of a deductible amount not identified in the contract documents, such loss shall be paid by CMAR.
- 8.1.6.9 With respect to deductibles identified in the contract documents and applicable to insurance as required in Section 8.1.6.8 the following apportionment of loss not insured because of the application of such deductibles shall be made:

- 8.1.6.9.1 Any insured other than Owner making claim to which a deductible applies shall be responsible for 100% percent of the loss not insured because of the deductible, and Owner shall pay to the insured the remaining 0% percent of the loss not insured because of the deductible.
- 8.1.6.10 The insurance as required in **Section 8.1.6** shall be maintained in effect, unless otherwise provided for in the contract documents, until the earliest of the following dates:
- 8.1.6.10.1 The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; OR
- 8.1.6.10.2 The date on which final payment has been made; OR
- 8.1.6.10.3 The date on which the insurable interests in the property of all insureds other than Owner have ceased.
- 8.1.6.11 Before the commencement of work, CMAR shall provide to Owner a copy of the insurance policy obtained in compliance with an accurate summary of the policy's coverages, conditions, exclusions, and endorsements before work begins, and a copy of the policy itself within 10 days after receipt by the CMAR.
- 8.1.6.12 If Owner is damaged by the failure of CMAR to maintain insurance as required, then CMAR shall bear all reasonable costs properly attributable to that failure.
- 8.1.6.13 Waiver of Subrogation:
- 8.1.6.13.1 Owner and CMAR waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, directors, agents, and employees, for recovery for damages caused by fire and other perils to the extent covered by builders risk insurance purchased pursuant to the requirements of this agreement, or any other property insurance applicable to the work.
- 8.1.6.13.2 If the builders risk insurance and other property insurance policies purchased as required above do not allow the insured to waive rights of recovery against others prior to loss, CMAR shall cause them to be endorsed with a waiver of subrogation as required above.
- 8.1.6.13.3 Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required in this agreement have consented to such partial occupancy or use.
- 8.1.6.13.4 Owner and CMAR shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse, or reduction of

insurance.

## 8.2 GENERAL REQUIREMENTS

- 8.2.1 Evidence of Insurance: Prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage, CMAR shall furnish Owner with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.
- 8.2.2 Subcontractors' Insurance: CMAR shall cause each subcontractor employed by CMAR to purchase and maintain insurance of the type specified above. When requested by Owner, CMAR shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- 8.2.3 OWNER and CMAR waive all rights against each other and any of their subcontractors, agents, employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance, except such rights as they have the proceeds of such insurance held by OWNER as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 8.2.4 All insurance shall be on an occurrence basis and not a claims-made basis, except for professional liability/errors & omissions.
- 8.2.5 All required insurance coverage as stated herein will be evidenced by a current ACORD Form 25 Certificate(s) of Insurance; such Certificates will include, but will not be limited to, the following:
- 8.2.5.1 All Certificates for each insurance policy are to be signed by a person authorized by that insurer.
- 8.2.5.2 Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. The insurance companies must have a Best's Rating of at least A- VII or better in the latest edition of Best's Insurance Reports. The adequacy of the insurance supplied by CMAR (or its Subcontractors) including the rating and financial health of each insurance company providing coverage, is subject to the approval of OWNER, approval of which shall not be unreasonably withheld.
- 8.2.5.3 Said policies, except Worker's Compensation and Professional Liability, shall name OWNER, its agents, employees, and members of the Board of Trustees as additional insureds. The policies will be primary and any other insurance carried by OWNER and/or CONTRACTOR shall be excess and not contributing therewith.
- 8.2.5.4 Each insurance policy supplied by CMAR (or its Subcontractors) must be endorsed to provide that the coverage will not be canceled or materially changed without prior written notice to OWNER. CMAR shall provide written notice by mail of any material change, suspension, voiding or reduction in coverage or in limits, of any insurance policy, which provides coverage required by this Contract. Said notice must be provided per policy provisions. This notice requirement does not waive the insurance requirements contained herein.

8.2.5.5 CMAR (or its Subcontractors) will furnish renewal certificates for the required insurance during the period of coverage required by this Contract.

Failure of Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of CMAR's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting CONTRACTOR or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

8.2.5.6 CMAR (or its Subcontractors) will furnish renewal certificates for the same minimum coverage's as required by this Contract. The notice for renewal will be submitted forty-five (45) days in advance of the expiration date shown on the Certificate of Insurance. A second request will be mailed if the Certificate is not received within ten (10) days. If, within twenty (20) days from the date of notice of renewal, the Certificate has still not been provided, OWNER may declare CMAR (or its subcontractors) in default of its obligations under this Article.

8.2.5.7 All deductibles and self-insured retentions will be fully disclosed in the Certificates of Insurance. CMAR (or its Subcontractors) is responsible for any deductible or self-insured retention contained within the insurance program.

8.3 Absence of Insurance:

In the event CMAR fails to provide OWNER with the insurance described in Articles 8.1 and 8.2, no work shall commence on the contract site. If the coverage required by CMAR is canceled, all Work on the contract site shall stop immediately, until the problem is resolved.

8.4 Payment of Builders Risk Deductibles:

8.4.1 When Owner is carrying Builders Risk Insurance, if a loss is caused by CMAR (or its Subcontractors), CMAR will be responsible for payment of the deductible per each occurrence of a loss as follows:

8.4.1.1 If arising out of direct damage to property under course of construction or installation, whether or not insured by OWNER, the first \$10,000.

8.4.1.2 If arising out of direct damage to property under course of construction or installation, whether or not insured by OWNER for perils of FLOOD and EARTH MOVEMENT, the first \$100,000.

8.4.1.3 If arising out of property damage liability, including loss of use thereof, the first \$5,000.

8.4.2 All deductibles as noted in Sections 8.4.1.1 through 8.4.1.3 shall be paid by CMAR, directly to OWNER.

8.5 Claim Reporting:

CMAR shall immediately report any incident or claim, no later than twenty-four (24) hours after occurrence, to OWNER.

- 8.6 Costs and Markups for Insurance Claims:  
All costs and markups for work performed by CMAR, on insurance claims, as noted in this General Condition, shall be in accord with all the requirements of **Article 12.0 - CHANGES.**
- 8.7 Familiarity with Coverages:  
It is CMAR's responsibility to familiarize itself with the coverages described in this General Condition.
- 8.8 OWNER's Insurance:  
OWNER will be responsible for purchasing and maintain its own liability insurance and, at its option, may purchase and maintain such insurance as will protect OWNER against claims that may arise from operations under the Contract Documents.

## **9.0 OWNER'S RESPONSIBILITIES**

OWNER will provide general administration of the Contract provided that such general administration shall not relieve CMAR of complete responsibility for the means and methods of construction and performance of the Work in accordance with the Contract Documents.

OWNER shall furnish site surveys describing the topography and physical characteristics, legal limits, and utility locations for the Project site.

Information or services under OWNER'S control shall be furnished by OWNER within a reasonable time to avoid delays in the orderly progress of the Work.

Prior to the start of construction, OWNER shall obtain all land and rights-of-way necessary for the carrying out and completion of the Work

## **10.0 CONTRACT TIME**

The date of commencement of the Work is the date established in the NTP letter issued by OWNER, or the date of the permit(s) – whichever is later. No Work shall be done at the project site prior to this date unless specifically directed by OWNER with the exception of mobilization and temporary utilities upon OWNER's approval.

CMAR shall begin the Work on the starting date established in the NTP letter. It shall perform the Work expeditiously with adequate forces and shall complete the Work within the Contract Time.

Normal working days are considered to be Monday through Friday, excluding holidays, between the hours of 7:00 am and 5:00 pm, or per City Ordinance and subject to approval by Project Manager. CMAR shall submit to OWNER its proposed working schedule for approval before commencing Work. If CMAR desires to work on any weekend day, holiday, during any other hours of the day, or change it's originally approved working schedule, it shall request and obtain OWNER's written approval at least 5 days in advance of the requested deviation.

OWNER reserves the right to stop CMAR activities during holidays or emergencies. OWNER reserves the right to vary or reduce the primary shift hours to accommodate special requests of the users of the Jobsite. OWNER reserves the sole right to determine the definition of a special request. CMAR shall use all reasonable means available to minimize demolition/construction noise generated through performance of the Work. OWNER reserves the right to temporarily suspend and reschedule performance of the Work should an adverse impact to OWNER's use of the jobsite be experienced as a result of excess noise.

It is expressly understood and agreed that the Contract Time is a reasonable and acceptable time for completion of the Work considering the requirements of the Contract Documents, the type and scope of the Project, and the usual industrial and labor conditions prevailing in the locality of the Project.

It is expressly understood and agreed that the Contract Time includes adequate time to allow for usual weather delays considering the climatic conditions in the area of the Project. No adjustments to the Contract Time will be allowed on the account of usual variations in weather. CMAR shall include adequate float or other allowance in construction schedule to accommodate weather conditions that may be associated with weather dependent Work.

The Contract Sum is based on the Contract Time specified in the OWNER-CMAR Construction Contract and shall not be based on an early completion schedule. No additional compensation shall be granted to CMAR for delays to an early completion schedule and any such claim is hereby waived.

## **11.0 CONSTRUCTION SCHEDULE AND DATA**

Within thirty (30) days after issuance of the NTP and prior to issuing any progress payment application, CMAR shall submit a construction schedule to OWNER and Architect for review. The schedule must be satisfactory to OWNER and Architect before the first payment application will be accepted. The schedule shall not exceed the Contract Time, shall be revised at appropriate intervals as required by the progress and conditions of the Work, and shall provide for performance and completion of the Project in accordance with the Contract Documents.

The construction schedule shall be organized to show progress for each trade and operation. As a minimum, the schedule shall show the order in which CMAR proposes to perform the Work, with the proposed starting and completion dates, and with available float for each activity of the Work. Activities which constitute critical path portions of the Work shall be clearly identified as such. The schedule will include procurement and delivery of major equipment and long lead items. The schedule will show testing, commissioning and training on equipment and systems. The schedule shall be promptly updated as necessary to reflect the Work required to implement each CCO and/or change in the Work. The schedule shall also include reasonable and orderly dates for issuance of all required submittals, allowing for reasonable notice and staged delivery of submittals to Architect.

OWNER may request CMAR to finish a section in which the Work is in progress before Work is started on any additional sections if the opening of such section is essential to OWNER convenience which may require a mutually agreed to adjustment in the construction schedule.

CMAR shall not disrupt any OWNER Operations unless agreed to in the approved schedule. Interface with OWNER Operations is integral to the successful performance of this Contract. CMAR shall not proceed with any portion of the Work without approved schedules and Work Plans in place. In addition, for any Work that is not outlined in the approved schedule, CMAR shall provide OWNER with seventy-two (72) hour notice prior to performance of any Contract Work that will impact OWNER Operations.

CMAR shall utilize a form of project planner software acceptable to OWNER in writing, to create and manage the construction schedule. Submitted schedules and associated data shall be provided in both hard copy and electronic file format. Upon written request by OWNER, CMAR shall provide prompt responses to any questions regarding reasons or causes for changes to the construction schedule.

If requested by OWNER, CMAR shall submit a current/updated construction schedule with each Progress Payment Application. If requested by OWNER it shall also include a brief narrative explaining if CMAR is on schedule and, if not, provide a recovery schedule for review by OWNER and Architect. The recovery schedule shall identify how CMAR proposes, at its sole expense, to overcome the associated delays and complete the Work within the Contract Time. Failure by CMAR to provide a current construction schedule when requested by OWNER shall be justification for OWNER to withhold value of uncompleted requirements.

## 12.0 CHANGES

### 12.1 Changes in the Work - General

- 12.1.1 OWNER's Project Manager and Architect shall have authority to order changes in the Work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be binding on CMAR.
- 12.1.2 OWNER, without invalidating the Contract, may order changes in the Work utilizing a CCD with the Contract Sum and/or the Contract Time being adjusted as deemed appropriate. CMAR shall comply with the provisions of Section 12.1.3 in the event that CMAR believes that a CCD has a potential impact on the Work.
- 12.1.3 Should any event or circumstance occur that CMAR believes may constitute a change in the Work entitling CMAR to an adjustment to the Contract Sum or the Contract Time, CMAR shall issue written notice and a request for a CCO to OWNER within five (5) days of the occurrence of such event or circumstance. Such written notice shall be issued by CMAR for any event or circumstance that CMAR knows, or should have known, to have a potential impact on the Work. The request shall describe in detail the related causes and any potential impact to the Work. CMAR shall also identify any anticipated adjustment to the Contract Sum and/or to the Contract Time as a result of such impact. Failure to submit such written notice and a request within the time stipulated and with the information required by this Article shall constitute a waiver by CMAR of the right to a CCO.
- 12.1.4 CMAR shall not proceed with changes to the Work without a CCD or a CCO. If CMAR proceeds with changes to the Work without proper written approval, it does so at its own risk.
- 12.1.5 Execution of a CCO shall be considered complete and final adjustment of the Contract Sum and the Contract Time and represents complete and final resolution of all matters related to, or arising out of, the CCO. Execution of a CCO by CMAR, or acceptance of payment by CMAR constitutes a complete waiver and release of all direct, indirect, consequential and impact costs and damages related to, or resulting from that CCO and its effect, if any, on unchanged Work, including, but not limited to jobsite overhead, home office overhead, interest or carrying charges on CMAR's investment, expenses arising from cost of capital, or for loss of use of, or under-utilization of labor, equipment, or facilities. The execution of each CCO, or acceptance of payment by CMAR shall constitute a full and complete settlement for all claims CMAR may have against OWNER for any damages and/or increased costs as a result of any delay, acceleration, hindrance, disruption, inefficiency, or other interference related to the CCO, and all previous CCOs. In estimating the effect of changes upon the cost of its Work and Schedule, CMAR shall ensure that he has properly accounted for all cost and time impacts and shall not later make any claim for reimbursement of impact costs allegedly resulting from the number, nature, or extent of CCOs. CMAR may not reserve the right to make further claims with regard to any executed CCO. Any attempt by CMAR to reserve such a right shall be considered invalid and unenforceable.
- 12.1.6 All requests for changes in the Work shall be submitted to OWNER and Architect in sufficient detail to allow a complete analysis of all proposed costs. CMAR shall, upon request by OWNER or Architect, submit invoices for materials and equipment utilized in CCO Work. Labor rates, including fringe benefits, shall be in conformance with the applicable Prevailing Wage Rates for this Project.
- 12.1.7 CMAR shall, upon request by OWNER or Architect, submit detailed rationale and justification for labor rates utilized in CCO Work.

12.1.8 CMAR will not be entitled to a CCO for any Work that reasonably could have or should have been identified as necessary during CMAR's participation in the design review process as defined in the OWNER-CMAR Pre-Construction Agreement.

12.2 Changes in the Work – Emergency

12.2.1 OWNER will issue written orders to CMAR for any changes provided that in the event of an emergency which OWNER determines endangers life or property, OWNER may issue oral orders to CMAR for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.

12.2.2 CMAR shall commence such changed work so that all the dates set forth in CMAR's current construction schedule as approved by OWNER will be met, provided that in the event of an emergency which OWNER determines endangers life or property, CMAR shall commence such change as required by OWNER. Failure to commence any such change in a timely fashion shall entitle OWNER to invoke the provisions of **Article 58.0 – TERMINATION FOR DEFAULT.**

12.2.3 If CMAR intends to assert a proposal for an equitable adjustment under this clause, it must within ten (10) calendar days after receipt of notification of such change, as provided for in **Article 12.1**, provide written notification of such intent and within a further thirty (30) calendar days, pursuant to **Exhibit "B" – Compensation Conditions Article 3.0, PRICING OF CHANGES**, submit to OWNER a written proposal setting forth the nature, schedule impact, and pricing in sufficient detail to permit thorough analysis and negotiation.

12.2.4 Any delay by CMAR in giving notice or presenting a proposal for adjustment under this clause shall be grounds for rejection of the proposal.

12.3 Contract Time Extensions

An extension in the Contract Time for a delay will be allowed only in the case that a full normal working day is lost. Delays will not be allowed for lost partial days or for lost non-working days.

All requests by CMAR for extensions of the Contract Time due to delays to the Work shall be made in writing to OWNER and Architect within five (5) calendar days after the start of the delay. Each CCO request shall describe in detail the event or events causing the delay, any related causes, and any impact to the Work. Failure to submit such requests within the stipulated time and with the information required by this paragraph shall constitute a waiver by CMAR of the right to an extension of the Contract Time on the basis of this event or issue.

If CMAR is delayed at any time in the progress of the Work by any act or neglect of OWNER or Architect, or by any employee of either, by any separate contractor employed by OWNER, or by circumstances that are agreed to be beyond the control and without the fault of CMAR and its Subcontractors and suppliers, the Contract Time may be extended by CCO for such reasonable time as OWNER may determine.

CMAR may be entitled to compensation or damages from OWNER because of justifiable delay caused by OWNER, Architect, or any person working for either of them. OWNER may compensate CMAR for any damages resulting from any affirmative, willful act in bad faith performed by OWNER or its employees which unreasonably interferes with CMAR's ability to complete the Work within the Contract Time.

For cumulative delays that total five (5) days, CMAR may request an additional two (2) days

to account for the associated non-working weekend days. Should CMAR request and be allowed a time extension which causes the Contract Time to end on a non-working day (on a weekend day or a holiday) the nonworking day(s) may be added to the Contract Time such that the Contract Time ends on a working day.

Extensions to the Contract Time will not be allowed for delays that do not affect the critical path for completion of the Work.

Extensions to the Contract Time will not be allowed for delays which could have been or may have been avoided by the exercise of care, prudence, foresight, and/or diligence by CMAR, or for delays resulting from correction of Work rejected as defective or as failing to conform to the Contract Documents. If the performance of such changes would result in an increase or decrease in the time required for completion of Work as shown on CMAR's approved construction schedule, CMAR shall revise the schedule to reflect the increase or decrease and submit such revised schedule to OWNER.

12.4 Force Majeure:

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases. If applicable, CMAR may then submit claim for contract time extensions and Cost of the Work per Article 12.

12.5 Payment for Changes:

It is expressly understood that no payment for change work will be made until the price of the change work has been approved by OWNER. Once approved, the price of the change work shall be added to the schedule of values and when the Work is completed, payment shall be included in CMAR's next Progress Pay Estimate, all in accordance with Exhibit "B" – Compensation Conditions, Article 5.0 – PROGRESS PAYMENT APPLICATIONS.

12.6 CMAR's Certification of Claims:

CMAR shall provide the following certification signed by an authorized representative of CMAR with respect to any Claim for adjustment in the Contract Price:

"I certify that this claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment in the Contract Price for which I believe OWNER is liable; that I understand Nevada law imposes liability for damages and civil penalties for knowingly presenting or causing to be presented a false claim for payment or approval or knowingly making or using, or causing to be made or used, a false record or statement to obtain payment or approval of a false claim; and that I am duly authorized to certify this claim on behalf of CMAR."

Except as otherwise provide by law and notwithstanding any other provision contained in the Contract Documents to the contrary, either state or federal courts which are located in Nevada will have exclusive jurisdiction over any dispute, claim or question involving an allegation of a false claim and such dispute, claim or question will not be subject to arbitration.

13.0 PROGRESS

CMAR shall give OWNER full information in advance as to its plans for performing each part of the Work. If at any time during the progress of Work, CMAR's actual progress is inadequate to meet the requirements of the Contract, OWNER may so notify CMAR who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by OWNER, CMAR does not improve performance to meet the currently approved contract construction schedule, OWNER may require an increase in CMAR's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to OWNER. Neither such notice by OWNER nor OWNER's failure to issue such notice shall relieve CMAR of its obligation to achieve the quality of work and rate of progress required by the Contract.

Failure of CMAR to comply with the instructions of OWNER may be grounds for determination by OWNER that CMAR is not prosecuting its work with such diligence as will assure completion within the times specified. Upon such determination, OWNER may terminate CMAR's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this contract.

#### **14.0 CONSTRUCTION PROGRESS MEETINGS**

CMAR shall, as requested by OWNER, attend any and all meetings required by OWNER to discuss the Work under the Contract. Such meetings shall be conducted by Project Manager and recorded by Architect with minutes of each meeting distributed to OWNER and CMAR.

##### **14.1 Pre-Construction Conference:**

As soon as practicable after award of Contract and prior to commencing any work, a pre-construction conference will be arranged. The purpose of said conference is to determine procedures related to smooth progress of the project and to review any items requiring clarification. Procedures for processing and distribution of all documents and correspondence related to the Contract will be established.

#### **15.0 SUBCONTRACTORS**

After submitting the required Subcontractor information to OWNER, CMAR shall not contract with any other Subcontractor nor change Subcontractors without proper justification and without the prior written approval of OWNER.

CMAR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to CMAR by the terms of the General Conditions and the other Contract Documents. These provisions shall include, but shall not be limited to, the following:

- 15.1 Require that the Subcontractor's Work be performed in accordance with the requirements of the Contract Documents and be guaranteed for a period of one year after the date of Substantial Completion, or as may be required in the Contract Documents.
- 15.2 Require that the Subcontractor's Work be performed in accordance with CMAR's construction schedule to ensure completion within the Contract Time.
- 15.3 Require that all claims by the Subcontractor for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to CMAR in the time and manner provided in the Contract Documents for like claims by CMAR upon OWNER

CMAR shall pay each Subcontractor, within ten (10) calendar days after receipt of payment from OWNER, an amount equal to the percentage of completion allowed to CMAR on account of each Subcontractor's Work. CMAR shall also require that each Subcontractor make similar payments to each Sub-subcontractor.

CMAR shall be as fully responsible to OWNER for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of the persons directly employed by them. If, through acts or neglect on the part of CMAR, any Subcontractor suffers loss or damage, CMAR agrees to settle with such Subcontractor. If such Subcontractor asserts any claim against OWNER on account of any damage alleged to have been sustained, OWNER shall notify CMAR, who shall indemnify, hold harmless, and defend OWNER against any such claim.

If CMAR fails to make appropriate payments to any Subcontractor, workers, or supplier, then OWNER may pay unpaid bills (unless CMAR has justification to withhold payment or if there is a substantiated claim by CMAR against such Subcontractor, worker, or supplier) and/or withhold from CMAR's unpaid compensation a sum of money deemed reasonably sufficient to reimburse OWNER or pay any and all such claims until satisfactory evidence is furnished that all such liabilities have been fully discharged by CMAR, but in no event shall the provisions of this paragraph be construed to impose any obligations upon OWNER to CMAR, its Surety, Subcontractors, workers, or suppliers. In paying any unpaid bills of CMAR, OWNER shall be deemed the agent of CMAR, and any payment so made by OWNER, shall be considered as a payment made under the Contract by OWNER to CMAR, and OWNER shall not be liable to CMAR for any such payment made in good faith.

CMAR shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under the Contract.

OWNER may upon request, furnish to any Subcontractor or supplier, information regarding payments to CMAR on account of Work done by such Subcontractor or supplier.

Neither OWNER nor Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor, worker, or supplier, except as may otherwise be required by law.

## **16.0 LABOR, PERSONNEL AND WORK RULES**

CMAR shall employ only competent and skilled personnel to perform the Work. CMAR shall, if requested to do so by OWNER, remove from the Jobsite any personnel of CMAR whom OWNER determines unfit or acting or working in violation of any provision of this Contract.

CMAR shall comply with and shall cooperate with OWNER in enforcing Jobsite conditions and job work rules which directly affect the performance of the Work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, Jobsite safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

All CMAR personnel shall wear a CMAR company badge when on the Jobsite.

CMAR and subcontractors shall be bound by and comply with all federal, state and local laws with regard to minimum wages, overtime work, hiring, and discrimination, including Chapter 338 of the Nevada Revised Statutes, which is entitled "Public Works and Planning". CMAR shall ensure that all employees on the Work are paid in accordance with entitled Prevailing Wage Rates as approved by the State Labor Commissioner for Douglas County, Nevada and the minimum Federal Wage Scale as determined by the Secretary of Labor, as displayed in this Contract. All work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to OWNER.

CMAR shall comply with the Copeland Anti Kick Back Act (18 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each CMAR or Subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which it is otherwise entitled.

CMAR shall comply with the provisions of NRS 338.130 – Preferential employment in construction of public works. If the provisions of this Article are not complied with by CMAR, the Contract is void.

#### **17.0 NEVADA PREVAILING WAGE RATES**

17.1 This work will be performed using the Prevailing Wage Rates for Public Works, State of Nevada, as approved by the State of Nevada Labor Commissioner.

17.2 Prevailing Wage Rates for Public Works will be published only once each year. If a wage determination expires between Bid opening and the award of a Contract for a Public Works Project, the Labor Commissioner, upon written notification of that fact, will allow the Prevailing Wage Rates used in the Contract to be used for the duration of the project, as long as such action is not contrary to the general public interest (N.A.C. 338.040).

17.3 For a current list of Prevailing Wage Rates for Public Works, contact:

Office of Labor Commissioner  
675 Fairview Drive, Suite 226  
Carson City, Nevada 89701  
(775) 687-4850

17.4 CMAR shall ensure that all employees on the Work are paid in accordance with the current Prevailing Wage Rates for Public Works as approved by the State Labor Commission for Douglas County, Nevada, whenever the actual value of the Contract totals \$250,000.00 or more.

17.5 CMAR shall be aware that NRS 338.010 through NRS 338.090 covers use of Nevada Prevailing Wage Rates on Public Works Projects. In particular, CMAR shall be aware of NRS 338.060 and 338.070, which cover forfeit penalties against CMAR if any workman is paid less than the designated wage rate. The forfeit penalty can be \$20.00 to \$50.00 for each workman employed for each calendar day or portion thereof that the workman is paid less than the designated rate for any work done under this Contract. This includes all Subcontractors.

#### **18.0 CERTIFIED PAYROLLS**

CMAR and each of its Subcontractors shall maintain records for each worker employed by CMAR or its Subcontractors in connection with this Contract in accordance with NRS 338.070. CMAR shall furnish OWNER with one (1) copy of State of Nevada Weekly Wage and Hour Report of Public Work Contractors no later than one (1) week after the end of the month. CMAR shall include all reports for its subcontractors in this monthly submittal.

#### **19.0 PERMITS AND FEES**

CMAR shall be responsible for coordination and obtaining of any and all permits paid by OWNER and certificates, required by the relevant regulatory agencies, applicable to constructing and, upon completion, utilization of this facility by OWNER including: Plan Check fee(s), Building Permit(s), Grading Permit(s), Drainage/Flood Control Permit(s), Electrical Permit(s), Mechanical Permit(s), Plumbing Permit(s), Dust Control Permit(s), Fire Protection Permit(s), Water/Sanitation Connection Fee(s), Temporary Occupancy Certificate(s), Permanent Occupancy Certificate, or Security Deposits.

#### **20.0 TAXES**

CMAR shall pay all taxes, levies, duties and assessments of every nature, which may be applicable to

any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. CMAR shall make any and all payroll deductions required by law. CMAR shall defend, indemnify and hold OWNER harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

## **21.0 SITE CONDITIONS**

21.1 CMAR shall have the sole responsibility of satisfying itself concerning the nature and location of work and the general and local conditions, and particularly, but without limitation, with respect to the following:

21.1.1 Those affecting transportation, access, disposal, handling and storage of materials.

21.1.2 Availability and quality of labor, water and electric power.

21.1.3 Availability and condition of roads.

21.1.4 Climatic conditions, location of underground utilities, obstructions, obstacles or other materials, physical conditions at the Work sites and the Project area as a whole.

21.1.5 Topography and ground surface conditions.

21.1.6 Subsurface geology, and nature and quantity of surface and subsurface materials to be encountered.

21.1.7 Equipment and facilities needed preliminary to and during performance of the Contract.

21.1.8 All other matters, which can in any way affect performance of the Contract, or the cost associated with such performance.

21.1.9 The failure of CMAR to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the Contract.

## **22.0 DIFFERING SITE CONDITIONS**

CMAR is completely responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Jobsite, and the character and extent of existing improvements and work within or adjacent to the Jobsite.

If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions from those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the Jobsite are found which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, CMAR must immediately give written notice of such conditions to OWNER and to Architect before the conditions are disturbed. If after investigation of the conditions, Architect finds that the conditions materially differ, Architect shall, after consultation with OWNER, make such changes in the Contract Documents as it may deem necessary. Any increase or decrease in cost resulting from such changes will be adjusted by Change Order.

Any condition for which an equitable adjustment is sought by CMAR must be shown by a preponderance of the evidence to pre-date the NTP. No equitable adjustment will be made for differing conditions attributable to weather or acts of God occurring subsequent to the NTP. No equitable adjustment will be made for differing conditions attributable to man if caused by CMAR or its subcontractors after NTP.

## **23.0 STANDARDS AND CODES**

Wherever references are made in the Contract to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply.

In case of conflict among any referenced standards and codes or between any referenced standards and codes and Technical Specifications, Article 6.0 – CONTRACT INTERPRETATION shall govern.

## **24.0 CMAR's FIELD OFFICE**

- 24.1 Upon commencement of the Work, CMAR shall provide on or near the site a temporary field office for its own use (and for use by OWNER and others as required or appropriate). CMAR's field office shall contain at a minimum:
- 24.1.1 Minimum of 240 square feet of floor area and as appropriate to facilitate the required job site meetings, conference seating for 12.
  - 24.1.2 Outside door with security lock.
  - 24.1.3 Minimum of four electrical convenience outlets.
  - 24.1.4 Adequate light fixtures and lamps (as necessary to provide a minimum of 100 foot-candles at the desktop and plan table).
  - 24.1.5 Telephone line and a separate fax line.
  - 24.1.6 Heating, ventilation, and air conditioning provisions as necessary to maintain an indoor temperature of 72°F.
  - 24.1.7 Plan rack.
  - 24.1.8 Plan table (3 feet x 6 feet minimum size).
  - 24.1.9 First aid kit.
  - 24.1.10 Computer data/network connection (with Internet access).
  - 24.1.11 Conference table and chairs as necessary to accommodate the required construction progress meetings.
  - 24.1.12 Copy machine.
  - 24.1.13 Bottled water dispenser.
  - 24.1.14 Additional hard hats for use by OWNER and Architect.
- 24.2 CMAR shall pay the cost of all utilities, including telephone and janitorial service, as required for the maintenance of the temporary field office until the completion of the Project.
- 24.3 The temporary field office shall remain the property of CMAR, and shall be completely removed at the completion of the Project.
- 24.4 All costs in connection with meeting all the requirements of this General Condition shall be borne by CMAR.

## **25.0 TOILET FACILITIES**

CMAR shall provide and maintain in a clean and sanitary condition in a weatherproof building satisfactory toilet accommodations for all workers and for use by Architect and OWNER. Minimum toilet accommodations shall consist of a frost-proof chemical toilet or water closet with urinal. Temporary or portable toilet accommodations shall be completely removed upon completion of the Project. All costs in connection with meeting all the requirements of this General Condition shall be borne by CMAR.

## **26.0 NEVADA OSHES REQUIREMENT**

Prior to commencement of construction activities, CMAR must verify if any project activity meets at least one (1) of the following four (4) criteria described by the Nevada Occupational Safety and Health Enforcement Section (OSHES):

- 26.1 A new or renovated building or structure that has a ground floor which is more than thirty (30) feet above or below ground level;
- 26.2 A new building or structure which has an initial construction cost of \$10,000,000.00 or more;
- 26.3 A new building or structure which, when completed, will be 50,000 square feet or more; or
- 26.4 A new building or structure which, when completed, will be more than sixty (60) feet above the ground, excluding any antenna, smokestack, flagpole or similar attachment.

If at least one (1) of the four (4) criteria is met, then CMAR must give written notice to OSHES in accordance with current Regulations for the Nevada Occupational Safety and Health Enforcement Program, Chapter 618. CMAR shall develop, maintain and submit all data required by OSHES throughout construction. CMAR shall forward copies to OWNER of all correspondence and data submitted to and received from OSHES relative to the subject project.

## **27.0 SAFETY**

All costs in connection with meeting all the requirements of this General Condition shall be borne by CMAR.

### **27.1 Emergencies**

In case of an emergency which threatens loss or damage to property, personal injury, or life safety, CMAR shall immediately take all feasible actions to prevent or mitigate such loss, damage, injury or death, without awaiting instructions from OWNER or Architect. CMAR shall notify OWNER and Architect in writing of such emergency at the first feasible opportunity.

The amount of reimbursement claimed by CMAR on account of any emergency action shall be determined in the manner provided in Article 12.0 CHANGES for claims.

CMAR shall maintain a current emergency telephone number list at the job site. The list shall include telephone numbers for CMAR's superintendent and for other responsible CMAR representatives that can be contacted after normal working hours in the event of an emergency. This list shall be prominently posted both inside and outside of CMAR's field office.

### **27.2 Safety, Sanitary, Medical:**

CMAR shall, at all time, conduct all operations under this Contract in a manner to avoid the risk of endangerment to health, bodily harm to persons, and damage to property. CMAR

shall comply with their written Project Safety and Health Program. CMAR shall, in accordance with CMAR's established practices, have sole responsibility for implementing its safety and health program, taking all safety and health precautions necessary and continuously inspect all equipment, materials and work to discover, determine and correct any conditions which might result in any safety risks or damage to any property. CMAR shall furnish all safety equipment and instructions required for the Work and shall maintain and furnish accident, injury and any other records and reports required by applicable laws and regulations or by OWNER

CMAR shall promptly and fully comply with and carry out safety, sanitary and medical requirements as prescribed by Federal, State or local laws or regulations, and CMAR shall take such other measures as may be necessary or required to assure that the safety and health of its employees, subcontractors, OWNER, its representatives and the general public will be safeguarded.

Before starting work, CMAR shall provide a written Safety Program for OWNER's review. Such program shall be subject to approval. Such review shall not relieve CMAR of its responsibility for safety nor shall such approval be construed as limiting in any manner CMAR's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions at the site. CMAR shall promptly comply with any directive from OWNER in connection with safety.

CMAR shall designate a Safety Officer, acceptable to OWNER.

CMAR shall hold "New Hire" safety orientations for all its employees and its Subcontractors' employees to instruct them regarding the requirements of CMAR's safety and health program. CMAR shall furnish and cause its Subcontractors to furnish safety equipment to all employees and shall enforce the use of such equipment by the employees.

CMAR shall maintain all portions of work in a neat, clean and sanitary condition at all times.

CMAR shall ensure that all Subcontractors shall, without expense to OWNER, comply with the foregoing.

27.3 Construction Safety Fencing:

Required construction fencing will vary during the various work stages of the project. CMAR shall remove all temporary construction fencing, to include post concrete encasement, at the completion of the Work.

27.4 Smoking:

Jobsite is to be tobacco free. Smoking, tobacco products, and smokeless cigarettes shall not be permitted or tolerated on Jobsite.

27.5 Fire Prevention:

CMAR shall conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Jobsite. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of CMAR. This includes keeping the Jobsite area clear of all trash at all times.

All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden.

CMAR shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding and burning are conducted, no inflammable materials shall be allowed and a fire watch shall be provided by

CMAR to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

27.6 Pumping and Drainage:

Surface or sub-surface water or other fluid shall not be permitted to accumulate in excavations or under any structure. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by OWNER and other public agencies having jurisdiction.

27.7 Permitting and Dust Control for Construction Activities:

CMAR, for the duration of the Contract, shall maintain all excavations, embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Separate payment will not be made for dust control unless specifically defined as a separate pay item.

If OWNER determines that dust from the Jobsite constitutes a hazard to Jobsite occupants, CMAR shall take immediate action to reduce the amount of dust to the satisfaction of OWNER. If CMAR does not respond immediately, OWNER reserves the right to undertake dust control at CMAR's expense.

CMAR shall contain all dust caused by interior demolition, modification and improvements and shall not allow encroachment into the existing building. This shall include, but is not limited to, the paint surface preparation requirements, paint overspray, paint fumes, carpet and tile adhesive materials, sealants, concrete and terrazzo add-mixtures, cleaning products, and solvents.

27.8 Illumination:

When any work is performed at night or where daylight is shut off or obscured, CMAR shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in compliance with local code, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, and signal wires.

Lighting circuits in buildings and for parking lots and outdoor walkways must be functional at all times, even if this requires temporary wiring (and temporary power source) to be installed by CMAR as part of the Work.

27.9 Cleaning Up:

CMAR shall, at all times, keep its work areas in a neat, clean, and safe condition. Upon completion of any portion of the Work, CMAR shall promptly remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of Work. Upon completion of the Work and before final payment is made, CMAR shall at its expense, satisfactorily dispose of all plant, buildings, rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the Work, and CMAR shall leave the premises in a neat, clean, and safe condition. In the event of CMAR's failure to comply with the foregoing, the same may be accomplished by OWNER at CMAR's expense.

27.10 Hazard Communication:

CMAR shall be aware of OSHA Federal Standard 29 CFR 1910.1200, Hazard Communication and 29 CFR 1910.1020, Access to Employee Exposure and Medical Records. CMAR's Safety Program shall address and include all aspects of the preceding

OSHA rules, as well as any local or State hazard communication laws.

CMAR shall furnish to OWNER the MSDS Sheet on any material requiring same, for OWNER review and approval prior to said material being delivered to the site. CMAR shall specifically follow all the safety requirements listed on the MSDS Sheet.

27.11 Hazardous Materials:

During the course of construction, there may be hazardous materials discovered on the construction site. Such materials can be in the form of asbestos in structures, underground fuel storage units, contaminated soil or other unknown hazardous materials. CMAR shall immediately notify OWNER of any hazardous materials subsequently found on the site and shall not remove same without the permission of OWNER. OWNER shall be responsible for removal and abatement of any existing hazardous materials.

If the hazardous material and subsequent contamination was caused by CMAR, CMAR shall remove said hazardous material and contaminated soils or materials from the site and shall dispose of same in accordance with all Federal, State or Local laws or regulations. Removal of such materials and contamination shall be monitored by a licensed hazardous materials laboratory, and said laboratory shall prepare a written report attesting to the complete removal of the contaminating material and resulting contamination, all to the satisfaction of, and at no cost to, OWNER.

**28.0 REQUESTS FOR INFORMATION**

No Work shall be performed by CMAR without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents. CMAR shall, upon discovering any discrepancy, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to Architect. Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to CMAR, but will take such action only after consultation with OWNER. Until such written instructions are given, any Work done by CMAR, either directly or indirectly relating to such discrepancy, conflict, or inconsistency will be at CMAR's own risk, and CMAR shall bear all costs arising therefrom. CMAR shall maintain a sequential log of all RFIs.

CMAR shall report immediately to OWNER and Architect any discrepancy, conflict, or inconsistency that CMAR may discover, or should have discovered, in the Contract Documents. If CMAR performs any Work contrary to the Contract Documents, CMAR shall be solely responsible and shall bear all costs attributable thereto.

RFIs shall be limited to one specific issue or group of related issues and shall not address multiple issues. Architect will review and respond to RFIs within five (5) days from the date that the RFI is received by Architect. RFIs shall be issued by CMAR to Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Architect.

**29.0 CMAR-FURNISHED SUBMITTALS AND SAMPLES**

Review and permission to proceed by OWNER as stated in this Contract does not constitute acceptance or approval of design details, calculations, analysis, test methods, certificates or materials developed or selected by CMAR and does not relieve CMAR from full compliance with contractual obligations.

Approval of a Submittal, which changes or modifies a Technical Specification, does not constitute approval of those changes or modifications unless same have been specifically identified and submitted in writing as a deviation from or substitution of the Technical Specification.

29.1 Drawings:

- 29.1.1 CMAR shall review, stamp, and submit to the Architect with reasonable promptness and in an orderly sequence so as to cause no delay in the Work, all Submittals and/or shop drawings required by the Contract Documents or subsequently required by the Architect.
- 29.1.2 CMAR's schedule shall include reasonable and orderly dates for issuance of all significant Milestones, to allow for reasonable notice and staged delivery of Submittals to the Architect, as required in **Article 11.0 CONSTRUCTION SCHEDULE AND DATA**.
- 29.1.3 CMAR's Submittals shall provide specific written notice of any deviation from the requirements of the Contract Documents. Failure to specifically identify such deviations shall be adequate grounds for withholding approval of the Submittal or voiding any prior acceptance or approval of the Submittal.
- 29.1.4 Submittals shall be properly identified as specified, or as the Architect may require. By approving and issuing Submittals, CMAR thereby represents that it has determined and has verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and has checked and coordinated each Submittal with the requirements of the Contract Documents.
- 29.1.5 Architect will review Submittals within 7 days from the date that they are received for conformance with the Contract Documents. The review of a separate item shall not indicate approval of an assembly in which the item functions.
- 29.1.6 The review and approval of Submittals by the Architect shall not relieve CMAR from responsibility for errors or omissions in the Submittals.
- 29.1.7 CMAR shall correct Submittals as required by the Architect and shall resubmit the required number of corrected copies of Submittals until the Architect indicates that no further re-submittals are required. CMAR shall identify in writing all revisions made, in addition to identifying the corrections requested by the Architect on previous Submittals.
- 29.1.8 CMAR shall furnish required Submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than two Submittals. The Architect will record the time for reviewing subsequent Submittals, Samples or other items requiring approval and CMAR shall reimburse OWNER for Architect's charges for such time.
- 29.1.9 The number of Submittals provided and approved shall include one set for use by the OWNER.
- 29.1.10 None of the Work requiring Submittals or shop drawings shall commence until the associated Submittals have been reviewed and approved by the Architect.

29.2 Operations and Maintenance Manuals:

CMAR shall furnish two (2) original of Operations and Maintenance (O&M) Manuals providing data on and operation and/or maintenance procedures for all incorporated material, equipment and finishes installed under this Contract.

All data to be included in the O&M Manuals shall be included in CMAR's submittals under this General Condition.

CMAR shall provide separate volumes for General, Mechanical and Electrical portions of the Work. Each volume shall be a three-inch (3"), three-ring binder. The cover and spine of each volume shall be imprinted with name of project, OWNER, description of contents and date. All data shall be indexed as per the index of the Technical Specifications. All pages shall be 8-1/2 x 11 inches except for fold out pages of diagrams and manufacturer's literature. Include manufacturer's supplier's and subcontractor's names, addresses and telephone numbers, model numbers, proportions of mixes, furnish numbers and all pertinent information required for replacement ordering or duplication for each incorporated material, equipment and finishes installed under this Contract.

CMAR shall submit for approval by OWNER, a sample of the three-ring binder, appropriately inscribed, no later than NTP plus ninety (90) days.

Throughout the Contract submittal process, as an incorporated material, equipment or finishes submittal is reviewed and marked as Code 1, CMAR will place one (1) original of same in the O&M Manual. CMAR is advised that OWNER may request information from the O&M Manuals or request to review the Manuals during performance of the Contract, so it is imperative that CMAR develop and maintain the O&M Manuals from the beginning of the project. Additionally, CMAR shall furnish two (2) compact disks (CD's) of the O&M Manuals. The O&M Manuals and CD's will be forwarded to OWNER at Substantial Completion of the Contract or portions of the Contract.

Until the O&M Manuals are revised to include all approved Submittals, CMAR shall perform all maintenance required on all items contained in the O&M Manuals.

29.3 Data:

Data to be submitted and approved shall include, but not be limited to complete descriptions of all materials, fabrications, manufactured items, construction methods and sequences, and system designs, as well as items under the General Conditions, Special Conditions and Compensation Conditions.

### **30.0 SUBSTITUTIONS**

Any request by CMAR for material substitution of "an equal" item must be received by OWNER within seven (7) days after NTP as provided by Nevada Revised Statute.

Prior to proposing any substitute item, CMAR shall satisfy itself that the item proposed is, in fact, equal to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in OWNER's interest. Replacement parts, maintenance parts and spare parts for all materials and equipment offered as a substitution shall be readily available for delivery to the Reno area within seventy two (72) hours.

The burden of proof of equality of a proposed substitution for a specified item shall be upon CMAR. CMAR shall support its request with sufficient test data and other means to permit OWNER to make a fair and equitable decision on the merits of the proposal. CMAR shall provide Submittals, Samples, data and certificates for proposed substitute items as required by Article 29.0 – CMAR-FURNISHED SUBMITTALS AND SAMPLES accompanied by a Submittal Substitution Form. Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. OWNER will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified.

Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by any or all governmental agencies having jurisdiction over use of the specific material or method.

Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance.

Approval of a substitution shall not relieve CMAR from responsibility for compliance with all requirements of the Contract. CMAR shall bear the expense for any changes in other parts of the Work caused by any substitutions. If OWNER rejects CMAR's substitute item on the first submittal, CMAR may make only one additional request for substitution in the same category.

### **31.0 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP**

#### **31.1 Quality:**

CMAR shall be responsible for ensuring that all the Work is in complete compliance with the Contract Documents and applicable codes, and that all the Work is completed to the highest quality of workmanship.

CMAR shall develop and implement an appropriate quality assurance/quality control program for the Project. A detailed description of the program shall be furnished to OWNER and Architect for review and acceptance prior to submitting the first progress payment application.

CMAR shall provide to Project Manager and Architect a schedule of its internal and external consultant, subcontractor and supplier audits that are to be conducted to verify that all aspects of the Work are being conducted in accordance with the Contract requirements.

CMAR shall provide to Project Manager and Architect a schedule other items pertinent to Quality Control including testing and inspection, equipment and instrument calibration, training, and records retention.

CMAR shall, at CMAR's expense, perform all inspections required by the Contract Documents and shall notify OWNER in advance of such inspections to allow OWNER the opportunity to witness such inspections. All materials and equipment furnished and work performed shall be properly inspected by CMAR and shall at all times be subject to quality surveillance, observations or quality audit by OWNER. CMAR shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose OWNER shall be afforded full and free access to the shops, factories or places of business of CMAR and its Subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work.

CMAR shall provide full and free access at all times for OWNER to conduct OWNER's own independent inspections and tests and those inspections and tests required in accordance with Douglas County Building Department requirements, and the requirements of any other authority having jurisdiction. Such inspections and tests shall not relieve CMAR of CMAR's obligation to conduct all inspections and tests required by the Contract Documents.

If CMAR covers all or any portion of the Work prior to any quality surveillance or test by OWNER, the cost of any necessary uncovering and replacing shall be borne by CMAR. Neither the failure to make such quality surveillance, observation or quality audit, nor to discover and require corrective action of defective workmanship, materials, or equipment, nor acceptance of or payment to CMAR for such work, materials or equipment shall prejudice the rights of OWNER thereafter to correct or reject the same as hereinafter provided.

#### **31.2 Rejection of Materials or Workmanship:**

If any material, equipment or workmanship is determined by OWNER or Architect, either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Contract,

OWNER shall notify CMAR by a written Non-Compliance Report that such material, equipment or work is rejected and OWNER reserves the right to withhold payment on any such item. Thereupon, CMAR will, at its own expense, commence corrective work within five (5) days of the Non-Compliance Report, and remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract. If CMAR fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, OWNER may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to CMAR.

CMAR shall provide in writing to Project Manager and Architect specific steps and procedures that will be performed to rectify non-conformances raised and reported through NCRs. Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to OWNER. Where Work is rejected because of defective material or workmanship, CMAR shall stop like Work in other areas or locations on the Project until the matter is resolved and OWNER has approved corrective measures.

Should it be considered necessary or advisable by OWNER or Architect at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, CMAR shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of CMAR or Subcontractors, CMAR shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of CMAR's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and CMAR's cost of material and labor necessary for replacement including markup per Exhibit "B" – Compensation Conditions, Article 3.0 – PRICING OF CHANGES for overhead and profit shall be paid to CMAR and, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time. Notwithstanding the foregoing, CMAR shall be responsible for all costs and expenses in removing and replacing the Work if CMAR had covered the Work prior to any inspection or test contrary to the instructions of OWNER, Architect, or Project Inspector.

OWNER may issue NCRs on CMAR violations of the General Conditions, Special Conditions, Compensation Conditions, Technical Specifications or Drawings. OWNER reserves the right to backcharge CMAR for any and all costs OWNER incurs as a result of an NCR in accordance with Exhibit "B" – Compensation Conditions, Article 4.0 - BACKCHARGES.

## **32.0 TESTING**

### **32.1 Code Required Testing:**

OWNER shall, at OWNER's expense, perform all code required tests on all materials, equipment and work performed as required by the Contract Documents. OWNER shall notify CMAR in advance of such tests to allow CMAR the opportunity to witness such tests. Evidence that materials and equipment furnished and work performed have passed the code required tests shall be furnished to CMAR.

### **32.2 Contract Required Testing:**

CMAR shall, at CMAR's expense, perform all non-code required tests on all materials, equipment and work performed as required by the Contract Documents. CMAR shall notify OWNER in advance of such tests to allow OWNER the opportunity to witness such tests. Evidence that materials and equipment furnished and work performed have passed the required tests shall be furnished to OWNER, prior to payment of said materials, equipment or

work. Field testing of systems or parts of systems, as called for in the Technical Specifications or on the Drawings, to show compliance with the Contract Documents, shall be performed by CMAR, with OWNER witnessing said tests. Said tests shall be passed prior to final payment on the systems or parts of systems.

CMAR shall forward to OWNER, with each Monthly Progress Pay Estimate, copies of all test results that were conducted in the pay period, which are required by CMAR's approved Quality Plan. Test results shall be accompanied by a computerized abstract of same, which shall list the Contract number, type of test, exact location from which the sample was obtained or tested, results of the test, date of test, whether the test met the requirements of the Contract and signed by CMAR's Authorized Representative.

Should tests in addition to those required by the Contract be desired by OWNER, CMAR will be advised in reasonable time to permit such testing. Such additional tests will be at OWNER's expense except as such additional tests are required due to CMAR's work or materials having failed any initial test.

CMAR acknowledges that OWNER will charge to CMAR's account any re-tests or re-surveys that are required by the failure of any of CMAR's materials or work. The cost of such re-testing or re-surveying shall be computed by taking the cost charged OWNER by the Materials Testing Contractor or the Verification Survey Contractor and adding a twenty-five (25) percent surcharge for OWNER's overhead and OWNER's Project Manager's overhead.

CMAR shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing.

CMAR shall furnish OWNER with certificates of compliance on materials prior to the use of those materials in the Work where required by the Technical Specifications.

CMAR shall conduct all quality control testing necessary to assure the product is in complete accord with the Contract Documents.

All tests performed under this Contract will utilize the ASTM test designation and procedure. Where other test procedures are required by the Technical Specifications, the equivalent ASTM test procedure will be performed for acceptance testing, unless otherwise directed by OWNER.

All testing shall be conducted in accordance with the ASTM testing procedure that is current at the time of award of the Contract.

### **33.0 AS-BUILT RECORDS**

#### **33.1 Drawings:**

Progress Records - During construction, CMAR shall keep a marked-up-to-date set of full size conformed drawings showing as-built conditions on the site as an accurate record of all work as shown and work as installed. These drawings shall be available to OWNER for inspection at any time.

As-built drawings include construction/erection drawings such as life-safety system drawings, mechanical shop drawings, etc. These drawings shall accurately reflect the as-built condition and shall be submitted as separate PDF files.

As-built data shall be recorded on the drawings in red pencil or ink. CMAR shall mark out with a single red line all superseded data and write in all as-built data.

33.2 Specifications:

Progress Records - During construction, CMAR shall keep a marked-up-to-date set of conformed specifications showing as-built conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These specifications shall be available to OWNER for inspection at any time.

As-built data shall be recorded on the specifications in red pencil or ink. CMAR shall mark out with a single red line all superseded data and write in all as-built data.

33.3 Changes:

CMAR shall add to the Drawings and Specifications all information contained in Answers to Questions, Contract Clarifications, Contract Changes, and approved revised or amended Technical Submittals.

33.4 Final Submittal:

CMAR shall, at its expense, before Final Payment, furnish to OWNER all progress record drawings and specifications, duly certified in writing, as being correct and accurate.

**34.0 OWNER-FURNISHED DRAWINGS AND TECHNICAL SPECIFICATIONS**

This is a performance contract and the Drawings and Technical Specifications furnished or referenced are intended to provide CMAR with sufficient information to establish the final location of all equipment and material and the required work to provide a fully operational system in accordance to the Drawings and Technical Specifications. Such Drawings, when used in connection with the Technical Specifications, contain information required for the preparation of detail drawings by CMAR.

CMAR shall, immediately upon receipt thereof, check all Drawings and Technical Specifications furnished and shall promptly notify OWNER of any errors, omissions, or discrepancies discovered in such drawings.

CMAR will be furnished, at no cost, one (1) print of the full sized set of drawings, one (1) print of the half sized set of drawings, and two (2) sets of the balance of the Contract Documents. In addition, CMAR will be furnished one (1) compact disk (CD) of the conformed Contract Documents.

**35.0 CMAR-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP**

Only new items of recent manufacture, of designated but in no event less than standard quality, free from defects, will be permitted on the Work. Rejected items shall be removed immediately from the Work and replaced with items of quality specified. Failure by OWNER to order removal of rejected materials and equipment shall not relieve CMAR from responsibility for quality and character of items used or from any other obligation under the Contract.

CMAR shall continuously check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for CMAR's negligence to foresee means of installing equipment into position inside structures.

No work defective in construction or quality or deficient in any requirement of the drawings and specifications will be acceptable regardless of OWNER's failure to discover or to point out defects or deficiencies during construction; nor will the presence of inspectors on the Work relieve CMAR from responsibility for securing the quality and progress of work as required by the Contract. OWNER shall notify CMAR of defective or unacceptable work as soon as OWNER discovers such defective work. Defective work revealed within the time required by warranties shall be remedied in accordance with the Article 51.0 WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective work or improper materials.

CMAR shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require.

CMAR shall order and schedule delivery of materials in reasonable time to avoid delays in construction. If an item is found to be unavailable, CMAR shall notify OWNER immediately of recommended substitute(s) to permit OWNER's selection of a suitable substitute.

OWNER will exercise sole authority for determining conformance of materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by CMAR for incorporation into the Work will be by OWNER. This function by OWNER will apply both to approvals for the Contract as initially signed, and to approvals for changes to contract by modifications during progress of the Work.

Reference to manufacturers' names, brands and model number is to establish the type and quality desired; substitutions may not be permitted unless specifically noted otherwise. Such substitutions shall be subject to written approval.

When materials, equipment, or systems are specified by performance only, without reference to specific manufacturers, brands or models, CMAR shall submit its own choice for OWNER's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

### **36.0 LINES AND GRADES**

Survey control points as shown on the drawings will be established by OWNER.

CMAR shall complete the layout of all work and shall be responsible for all requirements necessary for the execution of any work in accordance with the locations, lines, and grades specified or shown on the drawings, subject to such modifications as OWNER may require as work progresses.

If CMAR or any of its subcontractors or any of its representatives or employees move or destroy or render inaccurate any survey control point, other than required by the Contract Documents, those survey control points shall be replaced at CMAR's expense.

No separate payment will be made for survey work unless identified as a specific line item on the Bid Price Form.

### **37.0 ACCESS TO WORK AREAS**

OWNER, and its duly Authorized Representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements, have access to such areas and the premises used by CMAR. CMAR shall also arrange for OWNER, its said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

### **38.0 CMAR INGRESS AND EGRESS**

CMAR's access to the Work area will be permitted only through approaches, which will be designated by OWNER, and then only in such manner that CMAR's traffic will not interfere with OWNER's operations. CMAR shall, at all times, maintain controlled ingress and egress at the site. CMAR shall maintain unrestricted access to the Jobsite for access by emergency vehicles. CMAR personnel are not to enter into any areas of the Jobsite other than work areas and areas of designated access.

### **39.0 DELIVERY, UNLOADING AND STORAGE**

CMAR shall receive, unload, store in a secure place, and deliver from storage to the construction site all materials and plant equipment required for the performance of the Contract. The storage facilities and methods of storing shall meet OWNER's approval. Materials and equipment subject to degradation by outside exposure shall be stored in a weather-tight enclosure provided by CMAR.

#### **40.0 CMAR's WORK AREA**

All CMAR's work areas on the Jobsite will be assigned by OWNER. CMAR shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing work, CMAR shall provide a temporary office on the site of the Work, which shall have a telephone where a representative of CMAR may be reached at all times during normal working hours.

Because movement to and from a work area is limited, CMAR shall have in the Work area all equipment it determines necessary, as well as a first aid station, drinking water facilities, radio communications, restroom facilities and any other items to support CMAR's activities.

Should CMAR find it necessary or advantageous to use any additional land outside the project site for any purpose whatever, CMAR shall, at its expense, provide and make its own arrangements for the use of such additional land.

#### **41.0 CMAR's PLANT, EQUIPMENT AND FACILITIES**

CMAR shall provide and use on any work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Contract and within the time or times specified in the Contract.

Before proceeding with any Contract Work or with erection of any facilities, including but not limited to temporary structures, machinery, equipment, offices and warehouses, CMAR shall furnish OWNER with such information and drawings relative to such equipment, plant and facilities as OWNER may request. Upon written order of OWNER, CMAR shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify the unsatisfactory items to meet OWNER approval or remove the unsatisfactory items from the site.

CMAR shall not remove construction plant or equipment from the site before the Work is finally accepted without OWNER's written approval. Such approval shall not be unreasonably withheld.

#### **42.0 RESPONSIBILITY FOR WORK SECURITY**

CMAR shall at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. CMAR shall promptly take all reasonable precautions, which are necessary and adequate against any conditions, which involve a risk of loss, theft or damage to any property. CMAR shall continuously inspect all its work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such conditions.

CMAR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to OWNER in a timely manner.

CMAR shall be responsible to obtain from OWNER copies of applicable school site security regulations, and shall comply with said regulations for the Jobsite and all applicable laws and regulations. Any costs associated with appropriate badging of personnel shall be borne solely by CMAR.

CMAR shall cooperate with OWNER on all security matters and shall promptly comply with any Project security requirements established by OWNER. Such compliance with these security requirements shall not relieve CMAR of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner CMAR's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.

#### **43.0 PROTECTION OF WORK IN PROGRESS, MATERIALS, EQUIPMENT AND PROPERTY**

CMAR shall be responsible for and shall bear any and all risk of loss or damage to work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from CMAR's responsibility is any loss or damage, which results from the sole active negligence of OWNER or its representatives.

Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire work will be delivered to OWNER in proper, whole and unblemished condition.

##### **43.1 Protection of Existing Property:**

CMAR shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by CMAR's operations, CMAR shall, at its expense, make such repairs and provide such temporary guards, lights and other signals as necessary or required for safety and as will be acceptable to OWNER.

Unless otherwise specifically provided in the Contract, CMAR shall not do any work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by OWNER. Thereafter, and before it begins such work, CMAR shall give due notice to OWNER of its intention to start such work. CMAR shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference or delay caused by any such line, ditch or structure on or adjacent to the site of work.

CMAR shall preserve and protect all cultivated and planted areas, and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises, which, as determined by OWNER, do not unreasonably interfere with the performance of this Contract. CMAR shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including without limitation damage arising from the performance of its work through operation of equipment or stockpiling of materials. All costs in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by CMAR.

#### **44.0 PROJECT SITE PROTECTION**

CMAR shall be responsible for repairs to any wall, floor or ceiling surface within the existing Building(s) that is damaged by CMAR's construction operations. The required repairs shall be made in accordance with relevant construction specifications or Douglas County Standard Specifications, whichever is the more stringent, and in a manner satisfactory to OWNER. OWNER will be sole judge as to whether or not any areas have been damaged by CMAR and which specification is applicable.

If, in the opinion of OWNER, CMAR damages OWNER'S property and CMAR fails to take corrective action within five (5) days after receiving written notice of same, OWNER reserves the right to correct the violation. The cost of such correction shall be to the account of CMAR.

#### **45.0 DISPOSAL OF MATERIAL OUTSIDE JOBSITE PROPERTY**

CMAR shall make its own arrangements for disposal of materials outside the project and shall pay all costs involved.

CMAR shall remove all excavated material immediately from the Jobsite. No stockpiling of excavated materials shall be allowed at the project site. Materials resulting from demolition and from all excavations shall be removed immediately from Jobsite and hauled to an approved landfill.

When any material is to be disposed of outside the Jobsite property, CMAR shall first obtain a written permit from the property owner on whose property the disposal is to be made and it shall file in writing with OWNER said permit or the certified copy thereof together with a written release from the property owner absolving OWNER of any and all responsibility in connection with the disposal of material on said property.

When material is disposed of as above provided and the disposal location is visible from the project, CMAR shall dispose of the material in a neat and uniform manner to the satisfaction of OWNER.

Full compensation for all costs involved in disposing of material as specified in this Article, including all costs of hauling, shall be considered as included in the price paid for the Contract items of work involving such material and no additional compensation will be allowed therefore.

No material that is to be disposed of outside the Jobsite property shall be stockpiled on OWNER's property longer than seven (7) days, unless otherwise approved by OWNER.

#### **46.0 PROJECT SIGNS, PUBLICITY AND ADVERTISING**

With the exception of the right reserved by OWNER to erect a sign in connection with the project and unless otherwise provided in the Contract Documents, CMAR shall not display or permit to be displayed on or about the project, any sign, trademark, poster or other advertising device, without prior written approval of OWNER.

CMAR shall not make any announcement or release any information concerning this Contract or the project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from OWNER.

#### **47.0 UTILITIES**

##### **47.1 Temporary Utilities:**

CMAR shall be solely responsible for providing all necessary temporary utilities. CMAR shall pay all costs related thereto, including, but not limited to, applications, fees, permits, engineering, and any other costs as may be required to acquire temporary utilities. OWNER will not be responsible for any delays or costs related to obtaining temporary utilities.

CMAR shall be responsible for procuring site/public utilities for CMAR's field office, staging area and construction operations. CMAR shall make arrangements with the applicable utility companies to provide services and CMAR shall bear all costs associated with procuring, maintaining and removing said utilities. CMAR shall also bear all time and usage utility charges for CMAR's field office, staging area and construction operations.

Temporary utilities may be connected to OWNER's existing metered utilities only with OWNER's and utility company's written authorization. Any connection to OWNER's existing utilities shall be separately metered to allow for proper allocation of utility costs, unless another arrangement is specifically agreed to and authorized by OWNER in writing.

Prior to final acceptance of the Work, CMAR shall, at its expense, satisfactorily remove and dispose of all temporary facilities for construction utilities and that upon removal and disposal of all temporary facilities, CMAR shall restore OWNER'S property to OWNER'S satisfaction.

47.2 Interruption of Existing Utility Services:

If CMAR needs to interrupt any existing services, such as, but not limited to electrical power, existing security hardware signals, telephone, water main, sanitary sewer, storm sewer, etc., CMAR shall notify OWNER, in writing, not less than three (3) full business days (a business day is defined as Monday through Friday, excluding holidays) prior to the planned interruption. OWNER will review such request, coordinate same and reply to CMAR, in writing, prior to the planned interruption time. CMAR shall not proceed with any planned utility interruption without written permission to do so from OWNER.

CMAR shall use the latest technology for locating embedded utilities prior to commencing with saw cutting, drilling or coring operations. CMAR shall perform the Work for the new plumbing, HVAC, electrical and control systems tie-ins or interruptions to existing facility services between the hours of 10:00 p.m. and 07:00 a.m.

In the event of any accidental interruption of any utility service, CMAR shall immediately undertake the following:

47.2.1 Make every possible effort to immediately restore the disrupted utility, even if on a temporary basis.

47.2.2 Call Project Manager immediately and report and describe the incident.

47.2.3 Execute a Report of Utility Interruption within twenty four (24) hours of the incident and forward the executed report to the Project Manager.

In the event of an accidental utility interruption, after completing the Report of Utility Interruption, CMAR shall submit to OWNER a proposed permanent repair plan, which, upon execution, will restore the damaged utility to like new in every way. Once the repair plan is approved by OWNER, CMAR shall proceed with a permanent repair of the interruption.

47.3 Transition:

CMAR shall be solely responsible for providing temporary heating, cooling, and/or ventilation as required to prevent degradation or damage to the Work. The permanent heating, cooling, and air handling systems shall not be utilized for the purpose of temporary heating, cooling, or ventilation until OWNER approves of such use in writing. In no case shall the permanent heating, cooling, or air handling systems be operated until they are complete, including formal start-up, check-out, and testing and balancing. Utilization of any of the permanent heating, cooling, or air handling systems prior to Substantial Completion shall not impact the specified warranty for such equipment which shall begin on the date of Substantial Completion in accordance with Article 51.0 WARRANTY.

**48.0 COMMERCIAL ACTIVITES**

CMAR shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by OWNER. CMAR shall not allow its employees to engage in any commercial activities on the site.

**49.0 USE OF COMPLETED PORTIONS OF WORK**

Whenever, as determined by OWNER, any portion of work performed by CMAR is in a condition suitable for use, OWNER may initiate a Certificate of Substantial Completion for that portion and take possession of or use such portion.

Such use by OWNER shall in no case be construed as constituting final acceptance, and shall neither relieve CMAR of any of its responsibilities under the Contract, nor act as a waiver by OWNER of any

of the conditions thereof, provided, that CMAR shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, CMAR shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

No failure by OWNER to insist upon the strict performance of any provision of this Contract or to exercise any right or remedy consequent upon a breach by CMAR thereof, and no acceptance of all or any part of the work or other action by OWNER preventing the continuance of any such breach shall constitute a waiver of any such breach or any subsequent breach of such provision.

If, as a result of CMAR's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to OWNER, OWNER shall have the right to continue such use until such portion of work can, without injury to OWNER, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.

CMAR shall not use any permanently installed equipment unless such use is approved by OWNER in writing. Where CMAR's written request is granted for the use of certain equipment, CMAR shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of OWNER.

If OWNER furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of CMAR and shall be considered CMAR's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by OWNER.

## **50.0 CONTRACT CLOSEOUT**

### **50.1 Substantial Completion**

50.1.1 When CMAR determines that the Work is complete in accordance with the Contract Documents, as modified by any contract changes, and OWNER accepts the Work as being substantially complete, CMAR shall submit a Certificate of Substantial Completion for OWNER review and acceptance after the following criteria have been met:

50.1.1.1 If applicable, CMAR has obtained a Certificate of Occupancy with no restrictions thereon,

50.1.1.2 If applicable, work requiring a building permit has been inspected and accepted by the issuing body,

50.1.1.3 All work shown on the Contract Documents and changes thereto, have been completed.

50.1.2 If, in the opinion of OWNER, the above conditions have been met, OWNER shall approve and return the Certificate of Substantial Completion to CMAR. At the same time, OWNER and Architect will prepare and issue to CMAR, a Punch List of items to be corrected. Refer to Article 50.2 - Punch List for Punch List performance requirements.

50.1.3 Failure to include any item on the Punch List will not alter the responsibility of CMAR to complete all the Work in accordance with the Contract Documents.

50.1.4 Subsequent to receipt of the Certificate of Substantial Completion, CMAR shall provide the following items to OWNER, prior to issuance of the Notice of Final Completion (refer to Article 50.3 - Notice of Final Completion) unless otherwise amended by OWNER.

50.1.4.1 Final Operations and Maintenance Manuals.

50.1.4.2 All warranty and guaranty formats.

50.1.4.3 Certified As-Built records.

50.1.4.4 All Non-Compliance Reports, whether open or closed.

50.1.4.5 All approved Submittals.

50.1.4.6 All CMAR Certified Payrolls as received and approved.

50.1.4.7 Open CCRs requiring CMAR action.

50.1.4.8 **General Conditions, Attachment "A" (if applicable).**

50.1.4.9 All known CMAR claims; quantified as to context and cost.

50.1.4.10 Any additional data required by the Contract.

50.1.5 CMAR shall be allowed ninety (90) calendar days after receipt of the Certificate of Substantial Completion to reconcile all outstanding items as listed above. OWNER reserves the right to impose any charges attributable to additional administration of the Contract beyond the ninety (90) day period.

50.2 Punch List:

CMAR shall notify OWNER in writing when all the items on the Punch List have been corrected. OWNER is obligated only to re-inspect the items on the Punch List one time. OWNER reserves the right to charge CMAR for the cost of subsequent re-inspection(s).

CMAR has thirty (30) calendar days, from the date of receipt of a Punch List, in which to correct the items listed on same. After the thirty (30) day period has expired, OWNER reserves the right to have other parties complete the correction of uncorrected items, chargeable to CMAR's account.

The Punch List shall be attached to the Certificate of Substantial Completion for CMAR completion.

50.3 Notice of Final Completion:

When CMAR considers the Work fully completed, it shall submit written notice to OWNER and Architect confirming that all the items listed in Article 50.1 - Substantial Completion, and Article 50.2 - Punch List have been completed and the documents listed below have been received and accepted, OWNER will execute a Notice of Final Completion.

50.3.1 A written notice that all conditions of the Contract have been concluded.

50.3.2 A final billing for the Contract including release of retention.

The Notice of Final Completion will be executed after Architect and OWNER perform a final inspection of the Work. If the Work is found to be incomplete or defective, CMAR will be notified in writing and provided with a list of observed deficiencies. OWNER may withhold

such payment as deemed appropriate to ensure the correction of the deficiencies. Should CMAR fail to promptly correct the deficiencies noted in the final punch list, OWNER may, upon seven (7) days written notice to CMAR, hire another contractor to correct such deficiencies, notify CMAR's Surety, and/or otherwise complete or correct the listed deficiencies, at CMAR's expense.,

When the Work and provisions of the Contract Documents are fully and satisfactorily completed, OWNER will pay to CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due CMAR.

Upon receipt of final payment, CMAR shall be deemed to have released all claims against OWNER arising under or by virtue of this Contract.

50.4 Commencement of Warranties and Guarantees

All warranties and guarantees and other applicable requirements designated in the Contract shall commence on the date of Final Completion, unless noted otherwise, except that OWNER, upon written request from CMAR, may approve earlier commencement dates for systems or equipment.

**51.0 WARRANTY**

Defective design issues are not covered under this Article and OWNER is responsible for all costs associated with defective design that can be documented and justified. CMAR should immediately document such issues and issue notification to OWNER under Article 12.0 CHANGES.

However, should CMAR perform WORK contrary to the Contract Documents and without a CCD or CCO per Article 12.0 CHANGES, the WORK shall be deemed an unauthorized redesign and shall be at CMAR's risk and expense.

Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any work covered by the Contract shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to OWNER. CMAR warrants all equipment, materials, and labor furnished or performed under this Contract against defects in materials and workmanship (unless furnished by OWNER), for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Contract or in the manufacturer's standard warranty, in which case the longer periods of time shall prevail) from and after Final Completion, unless noted otherwise, under the Contract, regardless of whether the same were furnished or performed by CMAR or by any of its Subcontractors. Upon receipt of written notice from OWNER of any defect in any such equipment, materials, or labor during the applicable warranty period, due to unauthorized design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by CMAR at a time acceptable to OWNER.

CMAR shall perform such tests as OWNER may require to verify that any unauthorized redesign, repairs and replacements comply with the requirements of the Contract Documents. All costs incidental to such unauthorized redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne by CMAR.

Where such redesigned, repaired or replaced work is performed less than one year from the end of the warranty period, CMAR warrants such redesigned, repaired or replaced work against defective design, materials and workmanship for a period of twelve months from and after the date of acceptance thereof. Where such redesigned, repaired or replaced work is performed more than one year from the end of the warranty period, CMAR warrants such redesigned, repaired or replaced work against defective design, materials and workmanship from and after the date of acceptance thereof until completion of the warranty period.

Should CMAR fail to promptly make the necessary redesign, repair, replacement and tests, OWNER may perform or cause to be performed the same at CMAR's expense. CMAR and its surety or sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein.

#### **52.0 EXAMINATION OF CMAR's RECORDS**

Both parties agree that OWNER shall, until the expiration of six years after final payment under this contract, have access to, and the right to examine any directly pertinent books, documents, papers and records of CMAR involving transactions relating to this contract, and to make excerpts and transcriptions thereof.

#### **53.0 SURVIVABILITY**

The terms and conditions of this Contract regarding confidentiality, indemnification, warranties, payment, dispute resolution and all others that by their sense and context are intended to survive the expiration of this Contract, will survive the expiration or termination of this Contract howsoever caused.

#### **54.0 OWNERSHIP AND USE OF DOCUMENTS**

Any drawings, reports, studies, photographs, negatives, or other documents prepared by CMAR in the performance of its obligations under this Contract shall be the exclusive property of OWNER and all such materials shall be remitted to OWNER by CMAR upon completion, termination, or cancellation of this Contract. CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of CMAR's obligations under this Contract, without the prior written consent of OWNER.

Copies of the Contract Documents which are reasonably necessary for the proper execution, progress, and satisfactory completion of the Work, shall be provided to CMAR by OWNER. Copies so furnished are not to be used by CMAR on any other project, and with the exception of one set for CMAR's records, are to be returned to OWNER at the completion or termination of the Work.

#### **55.0 COOPERATION WITH OTHERS**

OWNER and other contractors and subcontractors may be working at the site during the performance of this Contract, and CMAR's work may be interfered with as a result of such concurrent activities. CMAR shall fully cooperate with OWNER and other contractors to avoid any delay or hindrance of their work. OWNER may require that certain facilities be used concurrently by CMAR and other persons and CMAR shall comply with such requirements.

Any costs caused by defective or ill-timed work of others shall be borne by CMAR unless CMAR gives written notice to OWNER if reasonably possible prior to proceeding with the works. CMAR shall notify OWNER of any latent defect within seven (7) days of its discovery.

#### **56.0 SEPARATE CONTRACTS**

OWNER reserves the right to award other separate contracts in connection with other portions of the Project.

CMAR shall afford OWNER's separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall properly interface and coordinate CMAR's Work with theirs.

If any part of CMAR's Work depends on the proper execution of the Work of any separate contractor, CMAR shall inspect and promptly report to OWNER and Architect in writing any discrepancies or

defects in such other Work. Failure of CMAR to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper to receive its Work, except as to defects which may develop in the other separate contractor's Work after the execution of CMAR's Work.

CMAR shall do all cutting, fitting, and patching of the Work that may be required to fit it to receive or be received by the Work of other contractors as indicated in, or reasonably implied by, the Contract Documents. CMAR shall not endanger or alter the Work of any other contractor.

Should CMAR cause damage to the Work or property of any separate contractor on the Project, CMAR shall, upon written notice, settle with the other contractor. If the separate contractor makes any kind of a claim, legal or otherwise, against OWNER on account of any damage alleged to have been sustained, OWNER shall notify CMAR who, at its sole expense, shall defend the proceedings and pay all costs in connection therewith, including, but not limited to, all court costs and attorney fees, and any judgments against OWNER arising therefrom.

If a dispute arises between CMAR and a separate contractor as to their responsibility for any costs or damages to the Project, OWNER may assign and charge such costs or damages to CMAR and/or the separate contractor as OWNER, in its sole discretion, determines to be appropriate.

#### **57.0 TERMINATION BY CMAR**

CMAR may, upon seven (7) days written notice, terminate the Contract after the Work is stopped for a period of sixty (60) consecutive days through no act or fault of CMAR, or of a Subcontractor, or their employees or agents, or due to issuance of a court order or other order from a public authority having jurisdiction.

If CMAR terminates the Contract under the terms of the previous paragraph, it may recover from OWNER payment for Work completed and approved, including reasonable overhead and profit earned through the date of termination. CMAR will not be entitled to overhead and profit on any unperformed Work.

#### **58.0 TERMINATION FOR DEFAULT**

58.1 Notwithstanding any other provisions of the Contract, CMAR shall be considered in default of its contractual obligations under the Contract if it:

58.1.1 Performs work which fails to conform to the requirements of the Contract;

58.1.2 Fails to make progress so as to endanger project schedule and/or scheduled Milestones;

58.1.3 Abandons or refuses to proceed with any of the Work, including modifications directed pursuant to **Article 12.0 CHANGES**;

58.1.4 Fails to fulfill or comply with any of the terms of the Contract;

58.1.5 Engages in behavior that is dishonest, fraudulent or constitutes a conflict of interest with CMAR's obligations under the Contract; or if

58.1.6 CMAR becomes insolvent or makes a general assignment for the benefit of creditors or reasonable grounds for insecurity arise with respect to CMAR's performance.

58.2 Upon the occurrence of any of the foregoing, OWNER shall notify CMAR in writing of the nature of the failure and of OWNER's intention to terminate the Contract for default. If CMAR does not cure such failure within seven (7) calendar days from receipt of notification, or sooner if safety is involved, or fails to provide satisfactory evidence that correction of such

default has commenced and will be corrected within a reasonable time, OWNER may, by written notice to CMAR and without notice to CMAR's sureties, if any, terminate in whole or in part CMAR's right to proceed with the Work and OWNER may prosecute the Work to completion by contract or by any other method deemed expedient. OWNER may take possession of and utilize any data, designs, licenses, equipment, materials, plant, tools, and property of any kind furnished by CMAR and necessary to complete the Work.

- 58.3 CMAR and its sureties, if any, shall be liable for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, including, but not limited to, cost of administration, orders contracts, or subcontracts awarded to others for completion.
- 58.4 Upon termination for default, CMAR shall:
- 58.4.1 Immediately discontinue work on the date and to the extent specified in the notice and place no further orders or subcontracts to the extent that they relate to the performance of the terminated work;
  - 58.4.2 Inventory, maintain and turn over to OWNER all data, designs, licenses, equipment, materials, plant, tools, and property furnished by CMAR or provided by OWNER for performance of the terminated work. This includes all warranties and guarantees required by Article 51.0 WARRANTY.
  - 58.4.3 Promptly make every reasonable effort to obtain cancellation terms satisfactory to OWNER of all orders and subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements as directed by OWNER;
  - 58.4.4 Cooperate with OWNER in the transfer of information and the disposition of work in progress so as to mitigate damages;
  - 58.4.5 Comply with other reasonable requests from OWNER regarding the terminated work; and
  - 58.4.6 If applicable, continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Work that is not terminated.
- 58.5 If, after termination pursuant to this clause, it is determined for any reason that CMAR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 59.0 – Optional Termination.
- 58.6 The rights and remedies of OWNER provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

## **59.0 OPTIONAL TERMINATION**

- 59.1 OWNER may, at its option, terminate for its convenience any of the Work under the Contract in whole or, from time to time, in part, at any time by written notice thereof to CMAR. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of any such notice, CMAR shall, unless the notice requires otherwise:
- 59.1.1 Immediately discontinue the Work on the date and to the extent specified in the notice and place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of the Work under the Contract that is not terminated;

- 59.1.2 Promptly obtain assignment or cancellation upon terms satisfactory to OWNER of all orders and subcontracts to the extent they relate to the performance of the Work terminated or assign to OWNER those orders and subcontracts and revoke agreements specified in such notice;
  - 59.1.3 Assist OWNER, as specifically requested in writing, in the maintenance, protection and disposition of work in progress, plant, tools, equipment, property and materials acquired by CMAR or furnished by OWNER under the Contract; and
  - 59.1.4 If applicable, complete performance of any work that is not terminated.
- 59.2 Upon any such termination, CMAR shall waive any claims for damages from the optional termination, including loss of anticipated profits, on account thereof, but as the sole right and remedy of CMAR, OWNER shall pay CMAR in accordance with the following provisions, provided, however, that those provisions of the Contract which by their very nature survive final acceptance under the Contract shall remain in full force and effect after such termination:
- 59.2.1 All Contract amounts due and not previously paid to CMAR for work completed in accordance with the Contract prior to such notice
  - 59.2.2 All reasonable costs for work thereafter performed as specified in such notice.
  - 59.2.3 Reasonable administrative costs of settling and paying claims arising out of the termination of work under orders or subcontracts as provided in Article 59.1.2 above.
  - 59.2.4 The verifiable costs incurred pursuant to Article 59.1.3 above.
  - 59.2.5 Overhead and profit on Items 2 through 4 of this Article 59.2 per Exhibit B – Compensation Conditions.
- 59.3 CMAR shall submit within thirty (30) days after receipt of notice of optional termination, a proposal for an adjustment to the Contract price including all incurred costs described herein. OWNER shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.
- 59.4 The rights and remedies of OWNER provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

## **60.0 SUSPENSION**

- 60.1 OWNER may, at its sole option, decide to suspend at any time, from time to time, the performance of all or any portion of the Work to be performed under the Contract. CMAR will be notified of such decision by OWNER in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Jobsite. During the period of suspension, CMAR shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with the suspension.
- 60.2 Upon receipt of any such notice, CMAR shall, unless the notice requires otherwise:
  - 60.2.1 Immediately discontinue work on the date and to the extent specified in the notice;
  - 60.2.2 Place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;

- 60.2.3 Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to OWNER, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
  - 60.2.4 Continue to protect and maintain the Work including those portions on which work has been suspended; and
  - 60.2.5 Take any other reasonable steps to minimize costs associated with such suspension.
- 60.3 As full compensation for such suspension CMAR will be reimbursed for the following verifiable costs (without profit), without duplication of any item, to the extent that such costs directly result from such suspension of work:
- 60.3.1 A standby charge to be paid to CMAR during the period of suspension of work which standby charge shall be sufficient to compensate CMAR for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
  - 60.3.2 All reasonable and documented costs associated with mobilization and demobilization of CMAR's plant, forces and equipment;
  - 60.3.3 An equitable amount to reimburse CMAR for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
  - 60.3.4 If, as a result of any such suspension of work, the cost to CMAR of subsequently performing work is increased or decreased, an equitable adjustment will be made in the cost of performing the remaining portion of work.
- 60.4 Upon receipt of notice to resume suspended work, CMAR shall immediately resume performance of the suspended work to the extent required in the notice.
- 60.5 If CMAR intends to assert a claim for equitable adjustment under this clause it must, pursuant to **Article 12.0 – CHANGES**, and within ten (10) calendar days after receipt of notice to resume work, submit the required written notification of claim and within twenty (20) calendar days thereafter its written proposal setting forth the impact of such suspension.
- 60.6 No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any CMAR's non-compliance with requirements of this Contract.

## **61.0 CLAIMS FOR DAMAGES**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of the other party's employees, agents, or others for whose acts it is legally liable, claim shall be made in writing to such other party within seven (7) days after the first knowledge of such injury or damage and shall be resolved pursuant to **Articles 6.5 through 6.7**.

Any costs to OWNER caused by defective or ill-timed Work performed by CMAR shall be paid by CMAR.

## **62.0 NOTICES**

Any notices provided for hereunder shall be in writing and may be served either personally on the Authorized Representative of the receiving party at the job site or by registered mail to that party at the addresses shown below:

OWNER: East Fork Swimming Pool District  
1600 Highway 88  
Minden, NV 89423

Scott McCullough-Authorized Representative, Project Manager

CMAR:

These addresses may be changed by either of the parties by written notice to the other.

OWNER and any person or entity designated by OWNER has the authority to represent OWNER for the purposes of compliance under NRS 338.525 and NRS 338.535.

**63.0 CMAR CORRESPONDENCE**

All CMAR correspondence to OWNER pertaining to this Contract shall be numbered sequentially, grouped by letter or letter of transmittal, commencing with the Number 001, signed by CMAR's Authorized Representative. Any correspondence not so numbered or so signed by the Authorized Representative shall be returned to CMAR and shall not be recognized as Contract correspondence and shall not be considered to be notice to OWNER of anything and shall not require OWNER to take action or to respond. Any documents being transmitted electronically need to be PDF searchable text.

All CMAR correspondence to OWNER shall be transmitted through OWNER specified system.