

**EAST FORK SWIMMING POOL DOUGLAS COUNTY SCHOOL DISTRICT**  
**MINDEN, DOUGLAS COUNTY, NEVADA**

**EXHIBIT "B"**  
**COMPENSATION CONDITIONS**

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**EXHIBIT "B"**  
**COMPENSATION CONDITIONS**

**1.0 SCHEDULE OF VALUES**

Within fourteen (14) calendar days after the issuance of the Notice to Proceed, CMAR shall submit to OWNER and Architect a schedule of values of the various portions of the Work, aggregating to the total Contract Sum, divided to facilitate payments to Subcontractors, prepared in a form acceptable to OWNER, and supported by such data to substantiate its correctness as OWNER may require. This schedule, when approved by OWNER and Architect, shall be the basis for each Progress Payment Application. The scheduled costs shall be itemized in accordance with the breakdown listed in the CMAR GMP Proposal and according to the list of defined components included in Article 2.0 PAYMENT TERMS AND DEFINITIONS.

**2.0 PAYMENT TERMS AND DEFINITIONS**

2.1 Cost of the Work – refer to definitions contained in Exhibit "A" – General Conditions, Article 1.21 – DEFINITIONS.

2.2 CMAR's General Conditions – refer to definitions contained in Exhibit "A" – General Conditions, Article 1.11 – DEFINITIONS.

2.3 CMAR's Fee – refer to definitions contained in Exhibit "A" – General Conditions, Article 1.10 – DEFINITIONS.

2.4 CMAR's Contingency:  
Construction Contingency is for CMAR's exclusive use and may be used by CMAR at its sole discretion. CMAR will notify OWNER within forty-eight (48) hours of any Contingency Fund Expenditure. Use includes, but is not limited to:

2.4.1 Conflicts, ambiguities, schedule acceleration and any problems arising from a lack of coordination among and within the bid packages, and for any other problems arising from the gaps in scope interface between subcontractors;

2.4.2 Over time work to maintain the Project schedule that is not the result of any fault or neglect of OWNER;

2.4.3 For relatively minor additional work needed to address conditions discovered in the course of the Project.

2.5 OWNER's Contingency:  
OWNER's Contingency shall not be included in the GMP and is for OWNER's exclusive use and may be used by OWNER at its sole discretion. CMAR will notify OWNER in writing of any proposed OWNER's Contingency Fund expenditure, and OWNER's written approval is required in advance of any work. Use includes, but is not limited to:

2.5.1 OWNER requested changes to scope of work;

2.5.2 Unforeseen conditions;

2.5.3 Architect or Engineering design errors;

2.5.4 Schedule delays attributable to OWNER and in no way attributable to CMAR, its agents, employees, subcontractors, or suppliers.

- 2.6 Allowances and Add Alternates:  
Allowances and Add Alternates belong to OWNER, and solely for purposes as identified in the GMP, and any portion thereof that remains when the Work is completed belongs solely to OWNER.
- 2.7 Bonds and Insurances:  
CMAR shall only be reimbursed for actual cost of bonds and insurance charged by the relevant regulatory agencies to permit construction of the project. Exhibit "A" – General Conditions, Article 4.4 Bond Requirements describes CMAR's responsibility in this regard. CMAR shall purchase the bonds and insurance and submit invoices/receipts for same with the first progress payment requisition. The cost of said purchases shall be itemized as a lump sum amount and billed based upon the percentage complete of the entire Work. CMAR shall be reimbursed for direct costs of the bonds and insurance only, i.e., no overhead shall be applied to the cost of the bonds and insurance. The established Allowance for procurement of bonds and insurance is shown on the GMP Form and CMAR shall include this amount in CMAR's GMP for the Contract. Only those bonds and insurance obtained by the CMAR as required by the Contract are reimbursable from this specified line item in the GMP. CMAR and its Subcontractors shall not be entitled to additional bond or insurance costs for changes funded through CMAR Contingency or OWNER's Allowances or Add Alternates.

### 3.0 PRICING OF CHANGES

- 3.1 The cost of all changes shall be arrived at by one (1) or more of the following three (3) methods, in precedence:
- 3.1.1 Method One: Applicable Unit prices in the Contract Documents shall be used for additive or deductive units of work, whether quantity adjustments to field count or work added or deducted by OWNER, providing the addition or deletion of units does not exceed plus or minus twenty-five percent (+25%) on major contract items at the time of execution of the Contract. CMAR will verify the actual units added or deducted.
- 3.1.2 Method Two: Unless otherwise required, CMAR shall, within fourteen (14) calendar days following receipt of a written change request, submit in writing to OWNER a proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to OWNER of performing the change and shall reflect any changes to the schedule.
- The proposal shall state CMAR's added and/or deleted compensation in detail, including but not limited to:
- 3.1.2.1 Cost of Work, per Article 3.2.1.
- 3.1.2.2 CMAR Fee, per Article 3.2.2.
- If CMAR does not propose the compensation for such change or any part thereof within the time required, or if any compensation for such change, or any part thereof cannot be agreed prior to commencement of Work on the change, OWNER may use an Order-of-Magnitude Estimate for the change and the final cost of the change shall be determined in accordance with the details of this Article.
- 3.1.3 Method Three: For changes to the Contract that are negotiated after the Work is completed, the pricing change shall be based on the process set forth as described in Articles 3.1.1 and 3.1.2 above.

3.2 Compensation for Costs:

Costs for which CMAR shall be entitled to compensation under 3.1.2 are as follows:

3.2.1 Cost of the Work: as defined in Exhibit "A" – General Conditions, Article 1.21 – DEFINITIONS.

3.2.2 CMAR Fee: as defined in Exhibit "A" – General Conditions, Article 1.10 – DEFINITIONS.

The proposal may include a CMAR fee at the Contract established rate. The CMAR Fee shall be calculated against the CMAR Cost of the Work.

$$\text{CMAR Fee} = (\text{CMAR Fee \%} \times \text{CMAR Cost of the Work})$$

3.2.3 Subcontractor Overhead and Profit: Overhead, profit, and markup percentages shall be included as set out below. All overhead and profit markups shall be calculated against the Cost of the Work as defined in Exhibit "A" – General Conditions, Article 1.21 – DEFINITIONS.

For any tier Subcontractor, for any work performed by their own forces, the proposal may include an overhead/profit percentage up to a maximum of fifteen percent (15%). All costs details shall be submitted with the proposal and billings.

For any tier Subcontractor, for any work subcontracted to a lower-tier subcontractor, the proposal may include up to a maximum of a ten percent (10%) markup on the lower tier Subcontractors direct labor and material costs. All cost details shall be submitted with proposal and billings.

For self-perform change work by the CMAR's direct-hire forces, no additional overhead, profit and mark-up shall be applied and the provisions of Articles 3.1 and 3.2 shall prevail.

**NOTES: Example of CMAR Cost Proposal (for illustration purposes only).**

**CMAR**

Self perform work direct cost: \$100,000.00

**1st Tier Subcontractor**

Self perform work direct cost: \$ 90,000.00

Overhead/profit percentage (up to 15.00%) \$ 13,500.00

Total cost of self perform work with OH/P mark-up \$103,500.00

1st Tier Subcontractor mark-up on direct cost of 2nd tier Subcontractor

(up to 10.00%) \$ 5,000.00

1st Tier Subcontractor Total \$108,500.00

**2nd Tier Subcontractor**

Self perform work direct cost: \$ 50,000.00

Overhead/profit percentage (up to 15.00%) \$ 7,500.00

Total cost of self perform work with OH/P mark-up \$ 57,500.00

**CMAR COST OF THE WORK \$266,000.00**

**CMAR FEE (must align with RFP Proposal) 2.8% \$ 7,448.00**

**TOTAL CMAR PROPOSAL \$273,448.00**

- 3.2.4 Bond Cost: The CMAR and the Subcontractors shall not be entitled to additional bond or insurance costs for changes funded through the CMAR Contingency or the Owner's Allowances or Add Alternates. Refer to Article 2.7 for submittal of costs
- 3.2.5 Deductions or Additions: For deductive changes which do not contain any additive cost items, there will be a reduction in Cost of the Work and CMAR's Fee, and likewise, no additional cost by CMAR for processing.

For changes containing both additions and deductions, covering unrelated work, the allowance for overhead and profit, per Article 3.2.3, shall be in full on the additional subcontractor work and the deductions shall be at cost with overhead and profit deducted when the net difference is a deduct. CMAR Fee will not be allowed unless the net difference in cost is an add.

For changes containing both additions and deductions, covering related work or substitutions, the allowance for Subcontractor overhead and profit, per Article 3.2.3, shall be allowed only on the net difference in Cost of the Work, if that net difference is an add to the Contract. CMAR Fee will not be allowed unless the net difference in cost is an add.

#### **4.0 BACKCHARGES**

- 4.1 OWNER may in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to CMAR amounts sufficient to cover the full costs of any of the following:
- 4.1.1 CMAR's failure to comply with any provision of this Contract or CMAR's acts or omissions in the performance of any part of this Contract, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- 4.1.2 Correction of defective or nonconforming work by redesign, repair, rework, replacement or other appropriate means when CMAR states, or by its actions indicates, that it is unable or unwilling to proceed with corrective action in a reasonable time; and/or
- 4.1.3 Circumstances when OWNER agrees to or is required to take action or perform work for CMAR, such as cleanup, off-loading or completion of incomplete work.
- 4.2 OWNER may also backcharge against CMAR for work done or cost incurred to remedy these or any other CMAR defaults, errors, omissions or failures to perform or observe any part of this Contract. OWNER may, but shall not be required to, give CMAR written notice before performing such actions or work or incurring such cost.

The cost of backcharge work shall include:

- 4.2.1 Incurred labor costs including all payroll additives;
- 4.2.2 Incurred net delivered material costs;
- 4.2.3 Incurred lower-tier supplier and CMAR costs directly related to performing the corrective action;
- 4.2.4 Equipment and tool rentals at prevailing rates in the Jobsite area; and
- 4.2.5 A factor of twenty-five (25) percent applied to the total of Items 1 through 4 for

OWNER's overhead, supervision and administrative costs.

- 4.3 The backcharge notice may request CMAR's concurrence for OWNER to proceed with the required action or work. CMAR's failure to concur shall not impair OWNER's right to proceed with the action or work under this or any other provision of this subcontract.
- 4.4 OWNER shall separately invoice or deduct from payments otherwise due to CMAR the costs as provided herein. OWNER's right to backcharge is in addition to any and all other rights and remedies provided in this Contract or by law. The performance of backcharge work by OWNER shall not relieve CMAR of any of its responsibilities under this Contract including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and meeting Exhibit "A" – General Conditions, Article 11.0 CONSTRUCTION SCHEDULE AND DATA.

## 5.0 **PROGRESS PAYMENT APPLICATIONS**

CMAR shall submit a Progress Payment Application not more than once each month in the form required by OWNER. Each Progress Payment Application shall be accompanied by a current construction schedule, updated to reflect all change orders and/or changes in the Work.

Each Progress Payment Application shall correctly set forth the value of all Work satisfactorily performed to date, less ~~510%~~ of that amount as a retained percentage. ~~Once the Work is 50% complete, OWNER may, at OWNER's discretion, reduce the amount of retention to 5% of the total Contract Sum.~~ OWNER may pay the invoiced value, less retention, of materials properly stored on site or in approved, bonded, and insured facilities. In no event will the CMAR be paid more than the listed value of each properly completed portion of the Work, less the required retention, until the entire Work has been successfully completed.

If payment is requested for materials or equipment not yet incorporated in the Work, but delivered and properly stored at the site or at a bonded and insured facility previously approved by OWNER in writing, such payment shall be conditioned upon submission by CMAR of documentation, satisfactory to OWNER, as deemed necessary to protect OWNER's interest, including applicable insurance and transportation to the job-site. The risk of loss for such materials or equipment shall remain with CMAR until final completion and acceptance of the Work.

CMAR guarantees that title to all Work, materials, and equipment covered by a Progress Payment Application, whether incorporated into the Project or not, has passed to OWNER prior to issuing the Progress Payment Application, free and clear of all liens, claims, security interests, or encumbrances, and that no Work, materials, or equipment covered by a Progress Payment Application has been acquired by CMAR, or by any other person, subject to an agreement under which an interest therein, or an encumbrance thereon is retained by the seller or otherwise imposed by CMAR or such other person. This provision shall not be construed to relieve CMAR of its sole responsibility for the care and protection of the Work, and to restore all damages thereto, nor shall serve as a waiver of the right of OWNER to require the fulfillment of all terms of the Contract Documents.

Upon receipt of each Progress Payment Application, and within seven (7) days time, OWNER and Architect will either approve the Progress Payment Application, modify the Progress Payment Application for such amount as is determined to be properly due, or reject the Progress Payment Application.

OWNER may decline to approve any Progress Payment Application, or, because of subsequently discovered evidence or subsequent inspections, may nullify the whole or any part of a Progress Payment Application previously paid to such extent as may be necessary to protect OWNER from loss based on any of the following grounds. When the grounds are removed, payment shall be approved for the associated amount withheld.

- 5.1 Defective Work not remedied.
- 5.2 Claims filed or reasonable evidence indicating the probable filing of claims.
- 5.3 Failure of the CMAR to make proper payments to Subcontractors or Suppliers.
- 5.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum.
- 5.5 Damage to a separate contractor.
- 5.6 Reasonable indication that the Work will not be completed within the Contract Time.
- 5.7 Unsatisfactory execution of the Work by the CMAR.
- 5.8 Failure to maintain any insurance required by the Contract Documents.
- 5.9 Any other breach of the Contract Documents.

If OWNER should fail to pay CMAR within thirty (30) calendar days after the date that a Progress Payment Application is signed and approved for payment by OWNER, then the CMAR may, after seven (7) additional calendar days, give written notice to OWNER and stop the Work until payment is received.

No payment by OWNER shall constitute an acceptance of any Work not in accordance with the Contract Documents, nor shall it relieve CMAR of full responsibility for correcting defective Work or materials found at any time prior to completion of the entire Work or during the guarantee period.

## **6.0 FINAL PAYMENT**

When OWNER has received satisfactory evidence that all claims and obligations of CMAR have been paid, discharged, or waived, OWNER will make final payment to CMAR of all monies retained on all properly completed and accepted Work in addition to CMAR's share of funds remaining in CMAR's Construction Contingency and CMAR's share of cost savings after accounting for OWNER's share of funds remaining in CMAR's Construction Contingency and OWNER's share of cost savings per Contract ARTICLE 3 – CONTINGENCY FUNDS and ARTICLE 4 – COST SAVINGS.

Issuance of final payment shall constitute a waiver of all claims by OWNER except those arising from any of the following:

- 6.1 Unsettled claims.
- 6.2 Guarantee or Warranty issues.
- 6.3 Faulty or defective Work
- 6.4 Failure of the Work to comply with the requirements of the Contract Documents.
- 6.5 Latent defects in the Work.

If any such claims remain unsatisfied after final payment is made, the CMAR shall refund to OWNER all monies OWNER may be compelled to pay in discharging such claims and any costs related thereto.

The acceptance by CMAR of final payment shall constitute a full and complete release to OWNER of all claims by, and all liability to, CMAR for all things done or furnished in connection with the Work and for every act and neglect of OWNER and any others for whom OWNER is or may be responsible relating to or arising out of performance of the Work by CMAR. No payment, final or otherwise, shall operate to release CMAR or its Surety from any obligations under the Contract, or under the Performance and Payment Bonds.

As a condition of requesting or receiving final payment, CMAR shall submit all operation and maintenance manuals, guarantees, as-built drawings, surety release, and all other close-out documents as may be applicable under the Contract Documents.

## 7.0 LIQUIDATED DAMAGES

It is hereby mutually understood and agreed, by and between CMAR and OWNER, that the Contract Time, as specified in the Contract, is an essential condition of the Contract. It is further mutually understood and agreed that both the Work and the Contract Time shall commence on the starting date established in the Notice to Proceed letter.

CMAR agrees that all of the Work shall be prosecuted regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time.

If CMAR shall neglect, fail, or refuse to achieve Substantial Completion of the Work within the Contract Time, then CMAR and his Surety do hereby agree, as part of the consideration for the Contract, to pay to OWNER, not as a penalty, but as liquidated damages, the amount of \$1,500 for each and every excess calendar day that is required to achieve Substantial Completion of the Work. The specified liquidated damages shall be the OWNER'S sole and exclusive remedy for excess calendar days.

CMAR and OWNER mutually agree that in the event of a delay the actual damages to be suffered by the Owner are difficult to determine and accurately quantify, including but not limited to damages associated with school closures and incomplete or inadequate delivery of educational services to children as a result of a delay. Accordingly, CMAR, its Surety, and OWNER agree that the amount specified above for liquidated damages is the appropriate and best estimate of the damages that would actually be incurred by OWNER should the Work not be completed within the Contract Time.

Should the remaining balance of the Contract Sum be insufficient to cover the specified liquidated damages due OWNER, then OWNER shall have the right to recover such unrecovered liquidated damages from CMAR and/or its Surety.

Liquidated damages shall cease to be assessed on the date that Substantial Completion is achieved provided CMAR completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If CMAR does not complete all of the punch list work within the time limit stipulated in the Certificate of Substantial Completion, the assessment of liquidated damages shall resume on the date that the stipulated time limit expires and shall continue until all such punch list work is completed.