

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

**CONSTRUCTION MANAGER AT RISK**  
**CONTRACT FOR CONSTRUCTION**

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**CONTRACT**

This OWNER-CMAR Construction Agreement is made by and between the East Fork Swimming Pool District of 1600 Highway 88, Minden, NV 89423, hereinafter referred to as "OWNER," and the Construction Manager at Risk named below, hereinafter referred to as "CMAR," is made and entered into as follows:

**Execution Date:**                                 **, 2020**

**Project Identification**

EFSPD Project No.:                                 **CMAR**  
Project Name:   **West Side Expansion and Boiler Replacement**  
Project Location:                                   **1600 Highway 88, Minden NV**  
PWP Project No.:                                 **DO-20120-TBD**

**OWNER:**

East Fork Swimming Pool District  
1600 Highway 88  
Minden, NV 89423  
(775) 782-8840

**CMAR:**

**Architect:**

TSK Architects  
225 South Arlington Avenue, Suite B  
Reno, NV 89501  
(775) 857-2949

**ARTICLE 1: GUARANTEED MAXIMUM PRICE**

For furnishing of all materials and all labor, tools, and appliances and all expense, direct or indirect, connected with the proper execution of the Work and of maintaining the same until it is accepted by OWNER, the OWNER will pay and CMAR shall accept as full compensation therefore, a total sum not to exceed:

\$ \_\_\_\_\_

Written \_\_\_\_\_

the Guaranteed Maximum Price ("GMP"). This GMP is for the performance of the Work in accordance with the Contract Documents (as defined in Article 7 hereof).

The GMP is for the total amount and is not to be construed as a "line item" guarantee. If one category exceeds the budgeted amount, and another is less than the budgeted amount, they shall off set each other to the extent the total GMP is not exceeded.

**ARTICLE 2: ALLOWANCES**

CMAR has included in the GMP for the Cost of the Work "Allowances" for items for which final costs have not yet been determined. Allowances include the cost to CMAR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the project location, and all applicable taxes. CMAR's costs for unloading and handling on the project location, labor, installation costs, bond and insurances costs, overhead, profit, and other expenses contemplated for the allowances have already been included in the GMP. No demand for additional payment on account of any of the foregoing will be valid.

Whenever during the course of the construction, costs are less than the allowances, the OWNER may at its option allocate the savings to the OWNER's Contingency, reallocate the funds to another item, or take a deductive change order.

In no event shall there be an increase in the GMP or a material change in the Scope of the Work without OWNER's prior written consent through a Contract Change Order. However, if the final price of an allowance exceeds the GMP amount, CMAR may be allowed bond and insurances costs, overhead and profit on the difference between the GMP allowance amount and the final price.

**ARTICLE 3: CONTINGENCY FUNDS**

The GMP shall include a Construction Contingency that is for CMAR's exclusive use and may be used by CMAR at its sole discretion.

Any funds remaining in the Contractor's Contingency shall be split between CMAR and OWNER with OWNER receiving fifty-one (51) percent, and CMAR receiving forty-nine (49) percent and credited as indicated in Exhibit "B" – Compensation Conditions, Article 6.0 FINAL PAYMENT.

The 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.

#### **ARTICLE 4: COST SAVINGS**

CMAR shall work cooperatively, in good faith, with subcontractors, Architect, and OWNER to identify appropriate opportunities to reduce the Project costs and promote cost savings without sacrificing quality. Any identified cost savings from the GMP shall be released by CMAR as soon as practical to OWNER with intent to fund additional program elements.

Any funds remaining as a result of cost savings shall be split between CMAR and OWNER with OWNER receiving fifty-one (51) percent, and CMAR receiving forty-nine (49) percent and credited as indicated in Exhibit "B" – Compensation Conditions, Article 6.0 FINAL PAYMENT.

#### **ARTICLE 5: TIME OF THE ESSENCE**

Time is of the essence, and CMAR acknowledges that the time for completion of the Work is sufficient for it to perform all the Work. In case of failure on the part of CMAR to complete the Work within the time(s) specified in the Contract Documents or within such additional time(s) as may be granted by formal action of the Eas Fork Swimming Pool District Board of Trustees, OWNER reserves the right to require CMAR pay to OWNER, as liquidated damages, the sum(s) indicated in Exhibit "B" – Compensation Conditions, Article 7.0 LIQUIDATED DAMAGES.

Contract Time:

#### **ARTICLE 6: AGREEMENT TERMS AND CONDITIONS**

The term "Work" includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction of the Project as described by the Contract Documents.

CMAR agrees to provide all labor, materials, equipment, tools and services necessary, and to do everything required by the Contract Documents as necessary to complete all Work required for the Project within the time specified for Substantial Completion of the Work.

#### **ARTICLE 7: INCORPORATED DOCUMENTS**

OWNER and CMAR mutually agree that the following documents are incorporated into and made a part of this Contract by reference (the "Contract Documents"):

- Exhibit A: General Conditions of the Contract
- Exhibit B: Compensation Conditions
- Exhibit C: Addenda
- Exhibit D: Guaranteed Maximum Price as approved by the East Fork Swimming Pool District Board of Trustees
- Exhibit E: Technical Specifications
- Exhibit F: List of Drawings

In addition, the following items, which are not exhibits to this Contract, shall constitute part of the Contract Documents:

- Contract Drawings
- Construction Schedule submitted pursuant to Exhibit "A" – General Conditions, Article 11.0 CONSTRUCTION SCHEDULE AND DATA, and any amendments approved by the OWNER
- Current Prevailing Wage Rates, Douglas County, Nevada
- CMAR Contract for Preconstruction Services, by reference
- CMAR Fee Proposal submitted with Request for Proposal

**ARTICLE 8: GOVERNING ORDER OF CONTRACT DOCUMENTS**

The Bidding and Contract Documents include various divisions, sections and conditions, which are essential parts for the Work to be provided by the successful Bidder. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In case of discrepancy, the following precedence will govern:

- Contract
- Exhibit "A" – General Conditions
- Exhibit "B" – Compensation Conditions
- Exhibit "C" – Addenda
- Exhibit "D" – Guaranteed Maximum Price as approved by the EFSPD Board of Trustees
- Exhibit "E" – Technical Specifications
- Exhibit "F" – List of Drawings
- Contract Drawings
- Construction Schedule submitted pursuant to Exhibit "A" – General Conditions, Article 11.0 CONSTRUCTION SCHEDULE AND DATA, and any amendments approved by the OWNER
- Current Prevailing Wage Rates, Douglas County, Nevada

- CMAR Contract for Preconstruction Services, by reference
- CMAR Fee Proposal submitted with Request for Proposal

Addenda, Change Orders and Supplemental Agreements will take precedence over any of the above. Detailed plans shall have precedence over general plans.

CMAR shall take no advantage of any apparent error or omission in the Bidding Documents. In the event CMAR discover such an error or omission, CMAR shall immediately notify OWNER. OWNER will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Bidding Documents.

#### **ARTICLE 9: CONTRACT TIME**

CMAR shall commence the Work to be performed under this Contract on the date set by OWNER in the written Notice to Proceed, continuing the Work with diligence and shall complete the entire Work in accordance with Exhibit "A" – General Conditions, Article 11.0 CONSTRUCTION SCHEDULE AND DATA. Further, in the event interim milestone completion dates are established in Exhibit "A" – General Conditions, Article 11.0 CONSTRUCTION SCHEDULE AND DATA for separable portions of the Work, CMAR agrees to complete said separable portions of the Work in accordance with said milestone dates.

#### **ARTICLE 10: AGREEMENT MODIFICATIONS**

This Contract embodies the entire agreement between OWNER and CMAR and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

#### **ARTICLE 11: ASSIGNMENT RIGHTS**

OWNER and CMAR each binds themselves, their partners, successors, assignees and legal representatives to the other party hereto and to the partners, successors, assignees and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract.

No party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other parties for which approval may be withheld for any reason or for no reason whatsoever. CMAR shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof, without prior consent of OWNER and concurred to by the sureties.

**ARTICLE 12: INDEMNIFICATION**

To the fullest extent permitted by law, CMAR shall defend, indemnify, and hold harmless OWNER, and its agents, employees, and members of the Board of Trustees from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of this Contract, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property caused by the negligent acts or omissions of CMAR, a Subcontractor, anyone directly or indirectly employed by them for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by OWNER indemnified hereunder. However, in no event shall CMAR be required to indemnify OWNER for claims, damages, loss or expenses arising out of OWNER's sole negligence. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

In any and all claims against OWNER, its agents, employees, or any of the members of the Board of Trustees by any employee of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the first paragraph of this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the contractor or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

CMAR's obligations of this Article shall not extend to the liability of the Architect or its employees arising out of (a) the preparation or approval of maps, sketches, opinions, reports, surveys, CCOs, designs, or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect or its employees provided such giving or failure to give is the primary cause of injury or damage.

**ARTICLE 13: PATENT INDEMNITY**

CMAR hereby indemnifies and shall defend and hold harmless OWNER and its agents, employees, and members of the Board of Trustees respectively from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by OWNER and its agents, employees, and members of the Board of Trustees respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by CMAR, or out of the processes or actions employed by, or on behalf of CMAR in connection with the performance of the Contract. CMAR shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by OWNER or its representatives provided that OWNER or its representatives shall have notified CMAR upon becoming aware of such claims or actions, and provided further that CMAR's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by OWNER or and its agents, employees, and members of the Board of Trustees.

CMAR shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

#### **ARTICLE 14: INDEPENDENT CONTRACTOR**

The parties agree that CMAR is an independent contractor and that this contract is entered into in accordance with Nevada law that CMAR is not an employee of OWNER, and that there shall be no:

1. Withholding of income taxes by OWNER;
2. Industrial insurance coverage provided by OWNER;
3. Participation in group insurance plans which may be available to employees of OWNER;
4. Participation or contribution by either the independent contractor or OWNER to the Public Employees Retirement System;
5. Accumulation of vacation leave or sick leave;
6. Unemployment compensation coverage provided by OWNER.

CMAR represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. CMAR shall act as an independent contractor and not as the agent of OWNER in performing the Contract and is responsible for maintaining complete control over its employees and all of its suppliers and Subcontractors. Nothing contained in this Contract or any Subcontract awarded by CMAR shall create any contractual relationship between any such supplier or Subcontractor and OWNER. However, each subcontract and supplier agreement entered into by CMAR, relative to the Contract, shall bind such Subcontractor or supplier to the same terms and conditions as appear in the Contract. CMAR shall perform all work in accordance with its own methods subject to strict compliance with the Contract.

#### **ARTICLE 15: RIGHTS AND REMEDIES**

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### **ARTICLE 16: SEVERABILITY**



The Contract and the various provisions thereof are severable. Should any part, clause, provisions or terms be declared invalid, ineffective, or unenforceable, the remaining provisions of the Contract shall remain in full legal force and effect.

#### **ARTICLE 17: FINAL PAYMENT**

As provided in Exhibit "A" – General Conditions, when the Work and all requirements 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 after accounting for OWNER's share of funds remaining in CMAR's Construction Contingency Fund and OWNER's share of funds remaining as a result of Cost Savings. The acceptance of the final payment by CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the OWNER relating or pertaining to the Work.

Acceptance of the final payment by CMAR shall terminate OWNER-CMAR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply.

#### **ARTICLE 18: FAIR EMPLOYMENT PRACTICES**

In connection with the performance of work under this Contract, CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin or ancestry, sex, sexual orientation, gender identity or expression, religion, disability, or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by CMAR shall constitute a material breach of this Contract.

#### **ARTICLE 19: INSURANCE REQUIREMENTS**

A certificate of insurance evidencing the required coverage, as stipulated in the General Conditions of the Contract, shall be filed with OWNER prior to CMAR mobilizing onto the Project site and prior to commencement of any work on the Project.

#### **ARTICLE 20: BONDS AND GUARANTY**

CMAR shall furnish a performance bond, payment bond and guarantee bond in the form attached hereto and in accordance with the requirements set forth in Exhibit "A" – General Conditions, Article 4.4 Bond Requirements.

#### **ARTICLE 21: STATUTORY REQUIREMENTS**

CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS), the Nevada Administrative Code (NAC) and local law as may apply to this Contract and to the work performed under this Contract and agrees to comply with all such applicable laws and regulations.

**ARTICLE 22: INFORMATION ACCESS**

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Contract shall be subject to inspection, examination and audit by OWNER, its agents and representatives, and the State of Nevada during the course of this project and for 3 years after its completion.

**ARTICLE 23: EXAMINATION OF DOCUMENTS**

Execution of this Contract by each party shall constitute the representation by each such party that it has examined the contents of all the Contract Documents, including, but not limited to, CMAR General Conditions of the Contract, that it has read and understands the same, and specifically agrees to be bound thereby.

SIGNATURE PAGE FOLLOWS

REST OF PAGE LEFT BLANK

IN WITNESS WHEREOF, the East Fork Swimming Pool District Board of Trustees has authorized its Director to execute this Contract on behalf of the said OWNER, and CMAR has hereunto set its hand and seal the day and year above written.

**OWNER:**

EAST FORK SWIMMING POOL DISTRICT  
MINDEN, DOUGLAS COUNTY, NEVADA

By: \_\_\_\_\_

SHANNON HARRIS

DIRECTOR

Date: This \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CONTRACTOR:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: This \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS,

THAT \_\_\_\_\_, as CMAR, and \_\_\_\_\_, as Surety, are held and firmly bound unto \_\_\_\_\_, hereinafter called OWNER, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said CMAR has been awarded and is about to enter into the annexed Contract with said OWNER to perform all Work required under the GMP Schedule(s)

of OWNER's specifications entitled \_\_\_\_\_.

NOW, THEREFORE, if CMAR shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of the Contract and any extensions thereof that may be granted by OWNER required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all modifications, additions, or alterations of the Contract that may hereafter be made, and shall also fully indemnify and hold harmless OWNER from all cost and damage which it may suffer by failure of reason to do so and shall fully reimburse and pay OWNER all outlay and expense which OWNER may incur in making good any such default, then this obligation shall be void; otherwise, to remain in full force and effect.

The Surety further agrees that whenever CMAR shall be, and is declared by OWNER to be, in default under the Contract (and said default shall be construed to be any breach of any of the provisions of the Contract on the part of CMAR) the Surety shall promptly remedy the default, or will complete the Contract in accordance with its terms and conditions and shall fully indemnify and hold harmless OWNER from all costs, damages and expenses which may arise thereafter (including reasonable attorney's fees) and which OWNER may suffer by reason of Surety's failure to do so.

**PERFORMANCE BOND - CONTINUED**

The Surety and CMAR further agree that any modifications, additions or alterations which may be made in the terms of the Contract or in the Work to be done thereunder, or any extensions of the Contract, or other forbearance on the part of either OWNER or CMAR to the other, shall not in any way release CMAR and the Surety, or either of them, their heirs, assigns, executors, administrators and successors, from their liability hereunder, notice to Surety of any such modifications, additions, extensions or forbearance being hereby expressly waived.

The sum of this Performance Bond is in addition to the sum of the Payment Bond being executed concurrently herewith.

SIGNED AND SEALED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

(SEALED AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

\_\_\_\_\_ (Seal)  
CMAR

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_ (Seal)  
Surety

BY: \_\_\_\_\_  
(Signature)

**LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_ as  
CMAR, and \_\_\_\_\_, as Surety, are held and firmly  
bound unto \_\_\_\_\_ hereinafter called OWNER, in the sum of  
\_\_\_\_\_dollars (\$ \_\_\_\_\_), for the payment of which sum well  
and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly  
and severally, firmly by these presents.

WHEREAS, said CMAR has been awarded and is about to enter into the annexed Contract with said OWNER  
to perform all Work required under the GMP Schedule(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ of  
OWNER's specifications entitled \_\_\_\_\_  
\_\_\_\_\_.

NOW, THEREFORE, if said CMAR, or subcontractors, fail to pay for any materials, equipment, or other  
supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for  
amounts due under applicable state law for any work or labor thereon, said Surety will pay for the same in an  
amount not exceeding the sum specified above, and, in the event suit is brought upon this bond, a reasonable  
attorney's fee to be fixed by the court. This bond shall insure to the benefits of any persons, companies, or  
corporations entitled to file claims under applicable state law.

**LABOR AND MATERIAL PAYMENT BOND - CONTINUED**

PROVIDED, that any alterations in the Work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said CMAR or said Surety thereunder, nor shall any extensions of the time granted under the provisions of said Contract release either said CMAR or said Surety, and notice of such alterations or extension of the Contract is hereby waived by said Surety. The sum of this Payment Bond is in addition to the sum of the Performance Bond being executed concurrently herewith.

SIGNED AND SEALED, THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEALED AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

\_\_\_\_\_ (Seal)  
CMAR

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_ (Seal)  
(Surety)

BY: \_\_\_\_\_  
(Signature)

**FORM OF GUARANTEE**

GUARANTEE FOR \_\_\_\_\_

\_\_\_\_\_  
(Name and address of prime contractor)

We hereby guarantee that the \_\_\_\_\_

\_\_\_\_\_  
(Description of the work)

Which we have constructed, has been done in accordance with the plans and specifications; that the Work constructed will fulfill the requirements of the guaranties included in the Contract Documents. We agree to repair or replace any or all of our work, together with any other adjacent work which may be damaged in so doing, that may prove to be defective in the workmanship or materials within a period of one year from the date of filing of Notice of Final Completion of the above named Work by the County of Douglas, State of Nevada, without any expense whatsoever to said County of Douglas, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within five (5) calendar days after being notified in writing by the East Fork Swimming Pool District, Minden, Nevada, we, collectively or separately, do hereby authorize East Fork Swimming Pool District to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand. When correction work is started, it shall be carried through to completion.

DATED: \_\_\_\_\_  
(Notice of completion filing date)

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

\_\_\_\_\_  
(CMAR) (Seal)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Surety) (Seal)

BY: \_\_\_\_\_  
(Signature)



**CMAR SURETY COMPANY CONTACTS**

PERFORMANCE BOND NO. \_\_\_\_\_

Surety Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Contact: \_\_\_\_\_

LABOR AND MATERIAL PAYMENT BOND NO. \_\_\_\_\_

Surety Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Contact: \_\_\_\_\_

GUARANTY BOND NO. \_\_\_\_\_

Surety Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Contact: \_\_\_\_\_