

(for publication in Local Newspaper)

**WHITE PINE COUNTY SCHOOL DISTRICT
REQUEST FOR PROPOSALS
FROM CONSTRUCTION MANAGER AT RISK FIRMS (CMAR)
FOR WHITE PINE COUNTY SCHOOL DISTRICT
FACILITY IMPROVEMENTS PROJECT**

Intent:

Solicit sufficient and verifiable information from prospective providers of Construction Manager at Risk (CMAR) services to provide experienced and expert services to White Pine County School District (WPCSD) Campus Improvements Covering Four School Locations.

Project Locations: McGill Elementary School; 25 Avenue F; McGill, NV
David E. Norman Elementary School; 1001 E 11th Street; Ely, NV
White Pine High School; 1800 Bobcats Drive; Ely, NV
Lund Schools; 301 E. 2nd North; Lund, NV

Description of Project:

Project Name: White Pine County School District Campus Improvements

Estimated Area of projects: Multiple school locations covering approximately 28,000 sf

Estimated Construction Budget: \$3 million

The anticipated time frame for pre-construction will be April 2025. Construction is anticipated to be from June 2025 to August 2025. The WPCSD reserves the right to change the budgets and schedules indicated above.

Description of Construction:

The proposed work includes up to, four (4) school sites and include the following:

Tasks	Location
6B - Replace Flooring	DEN
6C - Replace Classroom Lighting	DEN
5B - Pressure Wash & Re-paint exterior	Lund
5A - Pressure Wash & Paint Concrete Foundation	Lund
4A - Replace Gym Windows	McGill

4I - Replace Bleachers	McGill
4J- Classroom Mods	McGill
1E - Replace Bleachers	WPHS
1A - Replace Field Turf	WPHS
1C - Upgrade Gym Ceiling	WPHS
1B - Replace Field Lighting	WPHS
1G - Replace Overhead Coiling Door	WPHS
1H - Replace Classroom Lighting	WPHS

Nevada State Prevailing Wage Rates will apply, as this project will exceed the \$100,000 threshold. The CMAR (general contractor) and all subcontractors are to pay the prevailing wage rates defined at the time of construction contract execution as per the Northern Nevada Rural Region rates, inclusive of White Pine County, for the duration of the project.

https://labor.nv.gov/PrevailingWage/2021-2022_Prevailing_Wages/

Description of CMAR Services:

The CMAR will provide the required pre-construction and construction services. Pre-construction services shall include assisting the design team with constructability matters, construction cost, value engineering, and scheduling. The construction services shall include determining a Guaranteed Maximum Price (GMP), procurement of all subcontractor contracts, and managing construction of the project.

Request for Proposals:

The Request for Proposals will be available via email beginning **Monday, January 13, 2025**. To request the documents email paul.johnson@wpcnvadmin.com. All applicants must submit the Requests for Proposal on or before **Friday, February 14, 2025**, no later than 4:00p.m. Responses that are not received by the deadline time and date will not be accepted.

Please include in the 1/10 and 1/17 editions.

**REQUEST FOR PROPOSALS (RFP)
FOR CONSTRUCTION MANAGER AT RISK (CMAR)**

Date: January 10, 2025
Project Name: White Pine County School District (WPCSD)
Campus Improvements Covering Four School Locations
Project Locations: McGill Elementary School; 25 Avenue F; McGill, NV 89318
David E. Norman Elementary School; 1001 E 11th Street; Ely, NV 89301
White Pine High School; 1800 Bobcats Drive; Ely, NV 89301
Lund Schools; 301 E. 2nd North; Lund, NV 89317

Owner

White Pine County School District
1135 Avenue C
Ely, Nevada 89301
<https://www.whitepine.k12.nv.us/>

Owner Project Contract:

Paul Johnson, CFO
1135 Avenue C
Ely, Nevada 89301
775-293-0569
paul.johnson@wpcnadmin.com

All questions or comments pertaining to the RFP must only be directed to the Owner Project Contact listed above. Contacting any other individual at WPCSD or the Architect will be grounds for disqualification. Firms submitting proposals shall reply with three (3) paper copies and one (1) electronic copy response submitted on thumb drive within the same submission envelope as paper copies.

Architect

Lombard/Conrad Architects, Inc.
Ken Gallegos, Principal
472 W. Washington Street
Boise, ID 83702
Office: (208) 345-6677 Direct: (208) 780-0048

Statement of Proposal Delivery Deadline

Response Proposal packages from all interested parties will be accepted at:
White Pine County School District
1135 Avenue C
Ely, Nevada 89301
Attn: Paul Johnson, CFO
Due Date and Time: February 14, 2025, 4p.m.

ARTICLE 1 PROJECTS DESCRIPTION AND BUDGET

Project Name: White Pine County School District
Campus Improvements Covering Four School Locations

Tasks	Location
6B - Replace Flooring	DEN
6C - Replace Classroom Lighting	DEN
5B - Pressure Wash & Re-paint exterior	Lund
5A - Pressure Wash & Paint Concrete Foundation	Lund
4A - Replace Gym Windows	McGill
4I - Replace Bleachers	McGill
4J- Classroom Mods	McGill
1E - Replace Bleachers	WPHS
1A - Replace Field Turf	WPHS
1C - Upgrade Gym Ceiling	WPHS
1B - Replace Field Lighting	WPHS
1G - Replace Overhead Coiling Door	WPHS
1H - Replace Classroom Lighting	WPHS

DEN: David E. Norman Elementary

Lund: Lund K-12 School

McGill: McGill Elementary

WPHS: White Pine High School

Estimated Area of projects: Multiple school locations covering approximately 28,000 SF

Estimated Construction Budget: \$3,000,000

General description of the Preconstruction and Construction scope of services:

The work under consideration is Pre-Construction support and Construction for the White Pine County School District’s projects listed above. Proposed scope of work includes the items listed above but is not necessarily limited to these items.

Nevada State Prevailing Wage Rates will apply, as this project will exceed the \$100,000 threshold. The CMAR (general contractor) and all subcontractors are to pay the prevailing wage rates defined at the time of construction contract execution as per the Northern Nevada Rural Region rates, inclusive of White Pine County, for the duration of the project.

https://labor.nv.gov/PrevailingWage/2023-2024_Prevailing_Wages/

ARTICLE 2 CMAR SELECTION PROCESS

The CMAR selection process will be conducted in accordance with all the requirements stipulated in NRS 338. Applicants responding to this RFP must not include cost or pricing information related to the Applicant’s rates or anticipated cost to perform the preconstruction services. A short-list of between 2 and 5 CMAR firms will be determined based on proposals only. White Pine County School District reserves the option to award directly from the submitted proposals if they deem there is a clear front runner. If not, the final selection will be based on firm interviews and the CMAR Proposal (see CMAR Selection Criteria listed in Article 7). Failure to follow request may deem the Applicant’s Proposal non-responsive.

ARTICLE 3 CMAR PRE-CONSTRUCTION & CONSTRUCTION SERVICES

The pre-construction services generally required will include design assistance, multiple budget verifications, and construction systems or methods alternatives for “cost reduction” or “value added” purposes, construction scheduling, phasing, and logistics. It also includes providing White Pine County School District with bidding services and a Guaranteed Maximum Price (GMP) in accordance with NRS 338.

White Pine County School District expects the Construction Manager at Risk (CMAR) during the construction phase to perform the construction work if the GMP can be agreed upon and the construction contract executed. The construction work shall be in accordance with the contract terms and general conditions.

ARTICLE 4 PROJECT AND RFP TIME SCHEDULE

See Baseline Project Schedule Exhibit A. The Baseline Project Schedule includes a tentative schedule of events and dates. The Baseline Project Schedule is subject to change as deemed appropriate by White Pine County School District.

ARTICLE 5 STATEMENT OF PROPOSALS SUBMITTAL REQUIREMENTS (STEP 1)

The submittal shall be bound and indexed and shall be separated into the following specific categories. A cover letter shall be included that addresses pertinent general information as deemed appropriate (including the contact person for the applicant along with phone number and e-mail address)

SECTION 1. Firm Information

Firm name, business address, year established, type of firm ownership (i.e., single source, joint venture), name and address of parent company, former parent company names, name and contact information for principal personnel, areas of responsibility, and total number of personnel.

SECTION 2. Firm Organizational Chart

Indicate lines of responsibility and/or communication.

SECTION 3. Current Workload

Provide a list and a summary paragraph describing the firm's current workload, including a list of project names, locations and the associated contract values.

SECTION 4. Key Personnel on this Project

Provide a resume for each key person that will be assigned to this Project for its duration. Include their name and title, project assignment, total years of construction experience, years of experience with CMAR, years of experience with this firm, education including degree(s), year and discipline, active registrations and licenses including the number and State, qualifications, and experience. Please note the specific role performed on each project listed in the resume, highlighting projects of similar size and/or scope where the person's role was similar to their role on this project. As a minimum, provide a resume, qualifications and experience for the Project Director, Project Manager (Pre-construction), Project Manager (Construction), Superintendent. Provide a project-specific organizational chart.

SECTION 5. Project Experience in CMAR Method of Delivery in Nevada.

Include project name, project description, client references of those who have knowledge of the background, character and technical competence of the applicant (including contact name, email address, and telephone), completion date, project budget, type of services provided, and other pertinent information for up to 10 projects.

SECTION 6. Project Experience in Projects of Similar Size and/or Scope.

Include project name, project description, client references of those who have knowledge of the background, character and technical competence of the CMAR firm (including contact name, email address, and telephone), completion date, project budget, type of services provided, and other pertinent information for up to 10 projects of similar size and/or scope, both public and private by any delivery method, whether or not that method was the use of a construction manager at risk, and including, without limitation design-build, design-assist, negotiated work or value-engineered work, and an explanation of experience the applicant has in such projects in the State of Nevada.

SECTION 7. Project Implementation

- Describe your approach to performing Pre-Construction services.
- Describe how you would typically involve subcontractors in the Pre-Construction process and obtain subcontractor bids in a CMAR process.
- Describe how you would typically work with the Architect during the Pre-Construction process and how you leverage that coordination to provide value to the project.
- Describe your approach to performing construction administration and construction management.
- Describe your approach to controlling the project construction budget and schedule.
- Describe your approach to safety, including a summary of the Safety Programs established and the safety records accumulated by the firm including EMR from the previous 3 years. An

electronic copy of the applicant's complete safety manual shall be included with the proposal and shall be submitted on a USB Flash Drive or QR code link.

- Describe your approach to performing quality assurance/quality control during construction.
- Describe your approach to achieving project close-out (commissioning, punch-list, and warranty work).

SECTION 8. Past Performance (for relevant projects with a construction cost over \$1,000,000 completed in the last 3 years)

- List the name and general description of each project.
- List your firm's record of cost performance (list contract award amount versus final construction cost). Explain any cost deviations.
- List your firm's record of schedule performance (list original schedule versus final completion date). Explain any schedule deviations.
- Provide a letter certifying that your firm has not been disqualified from any project (per NRS 338.1691.2).

SECTION 9. Litigation & Dispute History (within the last 5 years)

- Have liquidated damages been assessed against your firm? If so, describe when, where, and why.
- Has there been a termination from a contract before completion? If so, describe when, where, and why.
- Has your firm been declared to be in default on any contract (whether bonded or not bonded)?
- Has any type of settlement been paid by your firm or to your firm in excess of \$25,000? If so, describe when, where, and why.
- Has there been a judgment rendered for breach of contract, other than a breach for legitimate cause? If so, describe when, where, and why.
- Has your firm been disqualified from being awarded a contract pursuant to NRS338.017, 338.13895, 338.1475 or 408.333? If so, describe when, where, and why.
- If a judgment has been entered and a case has been appealed, provide the general facts of the case and the basis of the appeal.

SECTION 10. Miscellaneous Submittal Requirements

- The applicant shall include a copy of their current State of Nevada Certificate of Eligibility.
- The applicant shall include a copy of the Preferential Bidders Status Affidavit (copy attached as Exhibit B).
- The applicant shall include a copy of their current Nevada Contractor's License.

SECTION 11. Insurance and Bonding Capacity

- Submit evidence of the financial capability of your bonding company.
- Is your bonding company listed by the United States Treasury?
- Submit written certification or other appropriate evidence from your bonding company confirming that your firm will have bonding capacity if this project, estimated at the value

listed in Article 1 of this Request for Qualifications, is added to your current and anticipated workload.

- Submit evidence that your firm is covered by workers compensation insurance as stipulated in the CMAR General Conditions of the Contract.
- Present evidence of ability to obtain insurance per limits as stipulated below.

The CMAR shall maintain limits no less than:

- General Liability: \$2,000,000 per occurrence and \$4,000,000 in both the General Aggregate and the Products/Completed Operations Aggregate, for bodily injury, personal injury and property damage. The General Aggregate must be on a Per Project basis. General Liability coverage shall specifically apply to the acts and/or omissions of CONTRACTOR and its subcontractors. Moreover, the above General Liability coverage shall be maintained in full force and effect for two (2) years from the date of completion of the project. Contractor shall name White Pine County as an Additional Insured on the General Liability Policy.
- Automobile Liability: \$2,000,000 minimum or the amount customarily carried by the CONTRACTOR, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limits may apply. Non-owned and hired automobile liability must be included.
- State Industrial and Occupational Disease Insurance. Obtain 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. Employers Liability must be maintained for a minimum of \$1,000,000 in limits. If an excess policy is utilized, the policy will provide excess coverage for Employers' Liability.
- Excess Liability limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate shall be provided. Policy shall be excess of the liability policies indicated above.

ARTICLE 6 DRUG & ALCOHOL POLICY

- In order to be eligible to perform work on a White Pine County School District construction project, all contractors who will work on such projects must implement safeguarding measures, including:
 - Segregation: Avoid contact between contractors and pupils as much as possible.
 - Supervision: Any necessary contact must be supervised by school staff or vetted volunteers.
 - Access Regulation: Agree on and regulate access to premises for contractors and deliveries.

- Background Checks: Contactor will ensure that all employees have passed background checks sufficient to determine whether employees pose a risk working around children and school facilities. If unsupervised contact with a student, or students, is possible, the contractor must provide fingerprinting certification before commencing work.
- All contractors who perform work on WPCSD projects, regardless of tier, shall have in place a WPCSD applicable drug and alcohol policy for all workers who will be employed on those projects. The Policy must meet the minimum requirements of WPCSD. Each contractor shall demonstrate compliance with this provision by submitting a certification under penalty of perjury that the Policy is in place, that it will be actively enforced, and that all workers who will be employed on WPCSD projects will have undergone the pre-placement drug testing required by WPCSD. WPCSD and/or the general contractor is empowered to review contractor records of enforcement of its Drug and Alcohol Policy at any time during the period following award of the contract up to and including completion of the project in order to determine whether the policy is in fact being enforced. The contractor shall forthwith deliver to WPCSD any and all records requested to determine compliance with this Drug and Alcohol Policy requirement. Failure to maintain or rigorously enforce the policy or to timely respond to WPCSD demands for production of records relating to the Drug and Alcohol Policy may result in termination of the project contract at no cost to WPCSD.

ARTICLE 7 CMAR EVALUATION AND SELECTION CRITERIA

Evaluations will be based on the information requested and provided in the CMAR’s Proposal. The defined categories will be evaluated on a percentage score or on a pass/fail basis, as may be applicable. All proposers understand and accept that the weighted selection criteria are both subjective and objective by nature and that the weight factor of each category is intended to define its relative importance. The ranking of each firm will be based on the Interview Short-list Selection Criteria (Step 1) shown below. By submitting a Proposal, the proposer acknowledges that WPCSD has sole and absolute discretion in determining the selection criteria and in evaluating the proposer based on the selection criteria in each category.

INTERVIEW SHORT-LIST SELECTION CRITERIA (STEP 1)

1. Number of Nevada CMAR Projects managed by the applicant:
25 Points
2. Project Experience with projects of similar size and scope:
15 Points
3. Professional Qualifications and experience of the applicant personnel, including the resume of any employee(s) who will be managing the pre-construction and construction of the work:
10 Points
4. The explanation of the experience that the applicant has with similar CMAR projects throughout rural counties and cities in Nevada:
15 Points

5. The proposed implementation plan of the applicant to manage the pre-construction and construction of the work which sets forth in detail the ability of the applicant to provide pre-construction services and to construct the work:
25 Points
6. The safety program established, and the safety records accumulated by the applicant:
5 Points
7. The evidence that the applicant holds a Certificate of Eligibility for Preferential Bidders status per NRS 338, including the Preferential Bidders Status Affidavit:
5 Points

TOTAL: 100 Points

8. The evidence of the ability of the applicant to obtain the necessary bonding for the work:
Pass/Fail
9. The evidence of the ability of the applicant to obtain the necessary insurance for the work:
Pass/Fail
10. The evidence that the applicant is licensed as a contractor pursuant to chapter 624 of NRS:
Pass/Fail
11. A statement of whether the applicant has been:
 - a. Found liable for breach of contract with respect to a previous project, other than breach for legitimate cause, during the five years preceding the date of the advertisement for this proposal, and;
 - b. Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.**Pass/Fail**

Note: If an applicant has a “Fail” on any of the above “Pass/Fail” criteria, their proposal may be rejected.

The ranking process for the interviews is separate from the process used to rank the applicants and is based only on information submitted during the interview process. The CMAR Final Selection Criteria is found below.

FINAL CMAR SELECTION CRITERIA (STEP 2: INTERVIEW PHASE)

1. The firm’s explanation of project experience with public CMAR projects within the state of Nevada:
25 Points
2. The firm’s explanation of project experience with projects of similar size and scope.
15 Points
3. Professional qualifications and specific experience by the assigned project team:
10 Points
4. Experience with CMAR projects in Rural Nevada and plan to adequately staff the project:

15 Points

5. The Proposed plan to manage the pre-construction and construction of the work and keep project on schedule and on budget:

20 Points

6. Overall Presentation including responses to interview questions:

10 Points

7. The evidence that the applicant holds a Certificate of Eligibility for Preferential Bidders status per NRS 338, including the Preferential Bidders Status Affidavit:

5 Points

TOTAL: 100 Points

Short listed firms only will be asked to review pre-construction & construction agreements and general conditions of the contract for comments.

Exhibits to this RFP include the following:

- Exhibit A: Timeline and Schedule
- Exhibit B: Preferential Bidders Status Affidavit
- Exhibit C: Owner-CMAR Pre-construction Contract (Sample)
- Exhibit D: Owner-CMAR Construction Contract (Sample)
- Exhibit E: Owner-CMAR General Conditions

END OF DOCUMENT

Exhibit A

Project Timeline and RFP Time Schedule

Note: These dates are tentative and are subject to revision by the Owner.

** - Denotes amended dates.

Activities	Date
Request for Proposal issued	01/10/2025
Last day to submit written questions	02/07/2025
Proposals Due by 4:00 pm	02/14/2025
Score and Review Proposals (on or before)	02/18/2025
Notification of short-listed CMARs	02/18/2025
Interviews of short-listed CMARs (Telephonic) (prior to)	02/28/2025
Anticipated CMAR selection recommendation of award	03/04/2025
Design kick-off meeting	03/14/2025
Construction commences	June 9, 2025
Desired construction completion date	August 15, 2025

The official award will be at the White Pine County School District public meeting held on **3/04/2025. The WPCSD Board of Trustees' decision will be final.

The schedule for Schematic, Design Development, Construction Documents, CMAR GMP Proposal, CMAR Construction Agreements, Construction and Completion for each project will be jointly determined by the Owner, Design Team and CMAR at the Initial team meeting.

EXHIBIT B

PREFERENTIAL BIDDER STATUS AFFIDAVIT

(This form must be submitted with Certificate of Eligibility for Preferential Bidder Status)

I, _____ (“Affiant”), on behalf of _____ (“Contractor”), swear and affirm that in order to be in compliance with NRS 338.147 and be eligible to receive a preference in bidding for Project No. _____, Project Name _____ (“Project”), certify that for the duration of the Project:

- a) At least 50 percent of all workers employed on the Project, including, without limitations, any employees of the Contractor and of any Subcontractor engaged on the Project, will hold a valid driver’s license or identification card issued by the State of Nevada Department of Motor Vehicles (“DMV”);
- b) All vehicles used primarily for the Project will be:
 - 1) (1)Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the DMV pursuant to NRS 707.826; or
 - 2) Registered in the State of Nevada;
- c) At least 50 percent of the design professionals working on the Project, including, without limitation, any employees of the Contractor and of any Subcontractor engaged on the Project, will have a valid driver’s license or identification card issued by the DMV;
- d) At least 25 percent of the suppliers of the materials used for the Project will be located in the State of Nevada; and
- e) The Contractor and any Subcontractor engaged on the Project will maintain and make available for the inspection within this State his or her records concerning payroll relating to the Project.

Upon submission of the State Contractors’ Board certificate of eligibility to receive a preference in bidding on public works and this Affidavit, Contractor recognizes and accepts that failure to comply with the requirements herein, including all recording keeping obligations detailed in the General Conditions, : 1) is a material breach of the Contract; 2) may result in the loss of a preference in bidding public works for five (5) years and/or the ability to bid on any contracts for public works within the State of Nevada for one (1) year; and 3) may entitle the **OWNER** to civil damages in the amount of ten (10) percent of the Contract Price. The Contractor acknowledges that he/she is required to follow the requirements regardless of whether the bidder’s preference was considered in determining the lowest responsive and responsible bidder on the Project.

By: _____
 Title: _____
 (Print Name of Affiant)

CORPORATE SEAL

Signature of Affiant: _____
 Title: _____

Date: _____

Signed and sworn to (or affirmed) before me on this ____ day of _____, 20____,
 by _____ (name of Affiant).

State of _____)

)ss.

Notary Signature

County of _____)

STAMP

Proof of Authorization to Sign Affidavit

The person must establish his/her actual authority to act on behalf of the business organization. The individual must be the person indicated in the table below and provide written documentation clearly indicating the person’s position within that business organization. If the individual signing the Affidavit is an employee of the business organization, written documentation, on organization letterhead, clearly indicating the person’s authority to act on behalf of the business organization must be provided. The written documentation must be signed by the authorized person identified on the table.

If the individual making application for the business organization is not one of the persons identified in the table or an authorized employee, a valid power of attorney executed by an authorized person on behalf of the business organization must be provided. The power of attorney must be made not more than 90 days before the Affidavit is signed.

BUSINESS ENTITY	PERSON WHO HAS AUTHORITY TO COMPLETE AFFIDAVIT
Sole Proprietorship	Sole Proprietor
Partnership	A Partner
Corporation	1. Director, if Authorized 2. Executive Officer as indicated in the Article of Incorporation
Limited Liability Company	1. Member, if Member-Managed LLC 2. Manager, if Manager-Managed LLC

Exhibit C

OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, entered into as of the following date:

Execution Date: (Insert Date)

between White Pine County School District as Owner, hereinafter referred to as "Owner", acting by and through:

White Pine County School District
Attn: Paul Johnson
1135 Avenue C
Ely, NV, 89301
(775) 289-4851

and the Construction Manager at Risk, hereinafter referred to as "CMAR":

CMAR NAME
Attn: (Insert CMAR Contact Individual)
ADDRESS
CITY, STATE, ZIP
PHONE

ARTICLE 1

In consideration of the mutual covenants and conditions provided herein, the Owner does hereby employ the CMAR to perform Pre-Construction Services, and the CMAR agrees to expeditiously perform such services for the referenced project.

Project Name: White Pine County School District (WPCSD) – Facility Improvements
Project Location: 1135 Avenue C; Ely, NV 89301
Project Number: TBD

ARTICLE 2

For furnishing all labor, materials, equipment, tools and services, and for doing everything required by this Agreement including, but not limited to, providing the required Guaranteed Maximum Price proposal, the Owner will pay and the CMAR shall receive as full compensation therefore, a total sum not to exceed:

CMAR Pre-Construction Services Fee Amount:\$ (Insert CMAR Pre-construction Service Fee Amount)

ARTICLE 3

Time shall be of the essence of this Agreement and the CMAR agrees to satisfactorily complete all professional services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed to be adequate cause for termination of this Agreement.

ARTICLE 4

The scope of the CMAR's Pre-Construction Services includes, but is not limited to the following:

1. Participation in regularly scheduled design progress review meetings with the Architect and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost, construction duration, sequence of construction, and construction means and methods.
2. Development of review comments, suggestions, and cost estimates at each of the stipulated phases of design (see Baseline Project Schedule in Request for Qualifications).
3. Assistance with identifying and reconciling differences between the Architect's cost estimates and the CMAR's cost estimates.
4. Development of constructability and value engineering suggestions at each phase of design.
5. Development of potential bidders lists and coordination of input from subcontractors with regard to each of the items previously described in this section (Article 4).
6. Distribution of documents to potential bidders, coordination of re-bid conferences and bid openings, and assistance with selection of the best bids in each category.
7. Development of a GMP Proposal based on bids obtained from all necessary subcontractors after reviewing and coordinating the bid results with the Owner.
8. Development of final CMAR constructability and value engineering suggestions (based on 100% Construction Documents).

ARTICLE 5

The Owner and the CMAR mutually agree that the following Contract Documents are incorporated into and made a part of this Agreement by reference:

1. CMAR Request For Proposals

ARTICLE 6

The 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 Agreement and to the work performed under this Agreement and agrees to comply with all such applicable laws and regulations.

ARTICLE 7

The Owner and the CMAR mutually agree that the fee described herein is for Pre-Construction Services only and in no manner obligates the Owner to enter into a construction contract with the CMAR.

ARTICLE 8

Execution of this Agreement by each party shall constitute the representation by each party that he has examined the contents of all contract documents, and specifically agrees to be bound thereby.

ARTICLE 9

This Agreement shall be construed and interpreted according to the laws of the State of Nevada. Any action brought by either party arising out of or related to the Agreement shall be brought in a court located in **White Pine** County, and not elsewhere.

ARTICLE 10

In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be utilized prior to pursuing legal action on the part of either the Owner or the CMAR.

ARTICLE 11

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, 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 (other than the Work itself) caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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 paragraph. The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.

ARTICLE 12

Prior to proceeding with the services covered by this Agreement, the CMAR shall submit proof of Commercial General Liability insurance in the amount(s) listed below. The insurance shall cover the entire period of services performed under this Agreement.

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000

A certificate of insurance shall be filed with the Owner evidencing the required coverage. The policy shall include a thirty day written notice to the Owner in the event of cancellation, or material alteration of the coverage. The Owner shall be named as additional insured on such certificate and the certificate shall also state that any coverage afforded the certificate holder shall apply as primary and not excess to any insurance issued in the name of the certificate holder. The CMAR shall provide his employees with worker's compensation insurance as required by Nevada Revised Statutes Chapters 616

and 617. A certificate evidencing coverage shall be filed with the Owner within ten days after execution of this Agreement and prior to commencing any work under this Agreement. The Owner is not liable for the payment of any premiums, deductibles, or any assessments on any insurance policies purchased by the CMAR.

ARTICLE 13

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 14

This Agreement constitutes the entire agreement between the parties and may be modified only by a written endorsement executed by the parties.

ARTICLE 15

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement for convenience seven (7) calendar days after having served the CMAR with a written notice of termination. Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

ARTICLE 16

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

ARTICLE 17

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to employment, up grading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The 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 the CMAR shall constitute a material breach of this Agreement.

ARTICLE 18

The parties agree that the CMAR is an independent contractor and not a **White Pine County School District** employee. CMAR's employees or contract personnel are not **White Pine County School District** employees and are not entitled to benefits otherwise provided to employees of the County, including, but not limited to medical, dental, or other personal insurance, retirement benefits, unemployment benefits or liability or worker's compensation insurance.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

White Pine County School District, by:

Paul Johnson, CFO
White Pine County School District

STATE OF NEVADA)

) SS:

COUNTY OF _____)

On this _____ day of _____, 2014, before the undersigned, a Notary Public in and for the County of _____, State of Nevada, personally appeared before me _____, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC

CONSTRUCTION MANAGER AT RISK

AUTHORIZED REPRESENTATIVE NAME, TITLE
CMAR FIRM NAME

STATE OF NEVADA)

) SS:

COUNTY OF _____)

On this _____ day of _____, 2014, before the undersigned, a Notary Public in and for the County of _____, State of Nevada, personally appeared before me _____, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC

Exhibit D

OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement, entered into as of the following date:

Execution Date: (Insert Date)

between White Pine County School District as Owner, hereinafter referred to as "Owner", acting by and through:

White Pine County School District
Attn: Paul Johnson, CFO
1135 Avenue C
Ely, NV, 89301
(775) 289-4851

and the Construction Manager at Risk, hereinafter referred to as "CMAR":

CMAR NAME
Attn: (Insert CMAR Contact Individual)
ADDRESS
CITY, STATE, ZIP
PHONE

ARTICLE 1

In consideration of the mutual covenants and conditions provided herein, the Owner does hereby employ the CMAR to perform Pre-Construction Services, and the CMAR agrees to expeditiously perform such services for the referenced project.

Project Name: White Pine County School District (WPCSD) – Facility Improvements
Project Location: 1135 Avenue C
Project Number: TBD

ARTICLE 2

The CMAR shall commence the Work as directed by the Owner in a written Notice to Proceed and has received all required permit(s). The Work shall be substantially complete and accepted by the Owner within the number of calendar days stipulated below as set forth in the Notice to Proceed. If the Work is not substantially complete within the time set forth in the Notice to Proceed the liquidated damages provisions stipulated in Article 5 shall apply.

The Date of Substantial Completion of the Work is [] calendar days from Date of Commencement.

ARTICLE 3

For furnishing all labor, materials, equipment, tools and services and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum (Guaranteed Maximum Price) not to exceed:

The CMAR's Guaranteed Maximum Price (GMP) for the entire Work on the referenced Project:

- 1) Cost of the Work (excluding General Conditions) \$ _____
- 2) CMAR's General Conditions \$ _____
- 3) CMAR's Fee \$ _____
- 4) CMAR's Contingency \$ _____
- 5) Bonds and Insurance \$ _____
- 6) Total Guaranteed Maximum Price \$ _____

ARTICLE 4

	<u>Owner</u>	<u>CMAR</u>
Percentage Split of GMP Savings	100%	0%
Percentage Split of CMAR's Contingency Savings	100%	0%

ARTICLE 5

The CMAR agrees that time is the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the Contract Documents within the specified contract time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, to pay, not as a penalty but as liquidated damages, the sum stipulated below for each calendar day in excess of the time allowed under Article 2 of this Agreement. Liquidated damages shall cease to be assessed on the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within (45) days after the date of the Certificate of Substantial Completion.

Liquidated Damages: \$1,500 per day

ARTICLE 6

The Owner and the CMAR mutually agree that the following Contract Documents are incorporated into and made a part of this Agreement by reference:

- 1 CMAR GMP Proposal
- 2 CMAR General Conditions of the Contract
- 3 Supplemental CMAR General Conditions (when applicable)
- 4 Wage Rates
- 5 Performance and Payment Bonds

- 6 Drawings
- 7 Specifications
- 8 Addenda
- 9 Change Orders

ARTICLE 7

Upon final completion of the Work and upon acceptance of the completed Project by the Owner, the Owner may file a Notice of Completion and will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR.

ARTICLE 8

The Contract Documents form the Agreement between the Owner and the CMAR. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all.

ARTICLE 9

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

ARTICLE 10

This Agreement shall be construed and interpreted according to the laws of the State of Nevada. Any action brought by either party arising out of or related to the Agreement shall be brought in a court or other tribunal as provided in the CMAR General Conditions located in , and not elsewhere.

ARTICLE 11

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Agreement shall be subject to inspection, examination and audit by the Owner.

ARTICLE 12

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

ARTICLE 13

Indemnification provisions are as set forth in Article 3.15 of the General Conditions of the Contract.

ARTICLE 14

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 15

This Agreement constitutes the entire Agreement between the parties and may be modified only by a written Change Order executed by the parties.

ARTICLE 16

The parties agree that the CMAR is an independent contractor and not a **White Pine County School District** employee. CMAR's employees or contract personnel are not **White Pine County School District** employees and are not entitled to benefits otherwise provided to employees of the County, including, but not limited to medical, dental, or other personal insurance, retirement benefits, unemployment benefits or liability or worker's compensation insurance.

ARTICLE 17

In connection with the performance of the Work, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex 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.

The 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 the CMAR shall constitute a material breach of contract.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

White Pine County School District, by:

Paul Johnson, CFO
White Pine County School District

STATE OF NEVADA)

) SS:

COUNTY OF _____)

)

On this _____ day of _____, 2014, before the undersigned, a Notary Public in and for the County of _____, State of Nevada, personally appeared before me _____, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC

CONSTRUCTION MANAGER AT RISK

AUTHORIZED REPRESENTATIVE NAME, TITLE
CMAR FIRM NAME

STATE OF NEVADA)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2014, before the undersigned, a Notary Public in and for the County of _____, State of Nevada, personally appeared before me _____, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC

Exhibit E

WHITE PINE COUNTY SCHOOL DISTRICT

CMAR GENERAL CONDITIONS OF THE CONTRACT

TABLE OF CONTENTS

SECTION 1: DEFINITIONS, RULES & REGULATIONS

- 1.1 The Project
- 1.2 The Work
- 1.3 The Owner
- 1.4 The Architect
- 1.5 The Construction Manager at Risk (CMAR)
- 1.6 Subcontractor
- 1.7 Sub-Subcontractor
- 1.8 Written Notice
- 1.9 Calendar Days
- 1.10 The Contract
- 1.11 Submittals and Shop Drawings
- 1.12 Rules and Regulations

SECTION 2: THE CONTRACT DOCUMENTS

- 2.1 Intent and Interpretation
- 2.2 Existing Conditions
- 2.3 Requests for Information
- 2.4 Submittals and Shop Drawings
- 2.5 Substitutions
- 2.6 As-Built Drawings
- 2.7 Changes in the Work
- 2.8 Construction Change Directives
- 2.9 CMAR's Use of Contract Documents

SECTION 3: THE CONTRACT

- 3.1 General
- 3.2 Contract Time
- 3.3 Contract Time Extensions
- 3.4 Substantial Completion
- 3.5 Final Completion
- 3.6 Guarantees and Warranties
- 3.7 Liquidated Damages
- 3.8 Claims for Damages
- 3.9 Dispute Resolution
- 3.10 Termination by the CMAR
- 3.11 Termination by the Owner
- 3.12 Separate Contracts
- 3.13 Assignment
- 3.14 Severability
- 3.15 Indemnification
- 3.16 Owner Oversight of Bidding Procedures

SECTION 4: THE OWNER

- 4.1 Owner's Responsibilities
- 4.2 Owner's Authority

SECTION 5: THE CONSTRUCTION MANAGER AT RISK (CMAR)

- 5.1 General
- 5.2 CMAR's Responsibilities
- 5.3 Superintendent
- 5.4 Labor and Materials
- 5.5 Temporary Utilities
- 5.6 Emergencies
- 5.7 Construction Schedule
- 5.8 Construction Progress Meetings
- 5.9 Progress Photographs
- 5.10 Taxes, Permits, Fees and Notices
- 5.11 Project Sign
- 5.12 Access Roads
- 5.13 CMAR's Field Office
- 5.14 Owner's Field Office
- 5.15 Toilet Facilities
- 5.16 Patents and Royalties
- 5.17 Construction Surveys
- 5.18 Subsurface Conditions
- 5.19 Archaeological Findings
- 5.20 Materials Testing
- 5.21 Operation and Maintenance Manuals
- 5.22 Correction of Work
- 5.23 Subcontractors
- 5.24 Job Safety
- 5.25 Drug and Alcohol Policy
- 5.26 Quality Assurance/Quality Control
- 5.27 Site Management and Cleanup Procedures

SECTION 6: THE ARCHITECT

- 6.1 Architect's Responsibilities

SECTION 7: PAYMENT

- 7.1 Schedule of Values
- 7.2 Payment Terms and Definitions
- 7.3 Progress Payment Applications
- 7.4 Final Payment
- 7.5 Interest Payments

SECTION 8: INSURANCE AND BONDING

- 8.1 General Requirements
- 8.2 Workers Compensation
- 8.3 Commercial General Liability
- 8.4 Business Auto
- 8.5 Property Insurance
- 8.6 Professional Liability Insurance
- 8.7 Performance and Payment Bonds
- 8.8 Required Limits of Insurance

SECTION 1: DEFINITIONS, RULES & REGULATIONS

- 1.1 **THE PROJECT** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part. The Project is identified by name, location, and project number in the Owner-CMAR Construction Agreement.
- 1.2 **THE WORK** 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 as described by the Contract Documents.
- 1.3 **THE OWNER** The Owner is the person or organization identified as such in the Owner-CMAR Construction Agreement. The term Owner means the Owner, **OWNER**, or its authorized representatives.
- 1.4 **THE ARCHITECT** The Architect is the person or organization responsible for the design of the Project and the preparation of the Drawings and Specifications on behalf of the Owner. The term Architect means the Architect or his authorized representatives.
- 1.5 **THE CONSTRUCTION MANAGER AT RISK (CMAR)** The CMAR is the person or organization identified as such in the Owner-CMAR Construction Agreement. The term CMAR means the CMAR or his authorized representatives.
- 1.6 **SUBCONTRACTOR** A Subcontractor is a person or organization who has a direct contract with the CMAR to perform any of the Work. The term Subcontractor means a Subcontractor or his authorized representatives.
- 1.7 **SUB-SUBCONTRACTOR** A Sub-subcontractor is a person or an organization who has a direct or indirect contract with a Subcontractor to perform any of the Work. The term Sub-subcontractor means a Sub-subcontractor or his authorized representatives.
- 1.8 **WRITTEN NOTICE** Written notice shall be deemed to have been duly served when delivered in person to the individual or member of the firm or to an officer of the organization for whom it was intended, or when sent by mail to the last known business address, or when sent by e-mail or facsimile. Minutes of construction progress meetings and/or Requests for Information do not constitute written notice.
- 1.9 **CALENDAR DAYS** All references to a ‘day’ or to ‘days’ in this document shall be understood to mean calendar days unless specifically indicated otherwise. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.
- 1.10 **THE CONTRACT** All of the Contract Documents form the Contract. The Contract Documents consist of all of the following, when applicable:
 - A. Owner-CMAR Construction Agreement
 - B. Supplemental CMAR General Conditions
 - C. CMAR General Conditions of the Contract
 - D. Change Orders
 - E. Addenda to Specifications
 - F. Addenda to Drawings

G. Specifications

H. Drawings

1.11 SUBMITTALS AND SHOP DRAWINGS

1.11.1 Submittals and shop drawings are drawings, diagrams, illustrations, performance charts, brochures, samples, and other data which are prepared by the CMAR or any Subcontractor, manufacturer, supplier, or distributor, which illustrate some portion of the Work.

1.11.2 Samples are physical examples furnished by the CMAR to illustrate materials, equipment, finishes, or workmanship, and to establish standards by which the Work will be judged.

1.12 RULES AND REGULATIONS

1.12.1 No elected or appointed official or employee of **OWNER** nor any consultant retained for or related to the Project shall have any personal financial interest, direct or indirect, in this Contract, or in any other contract relating to the Project.

1.12.2 The CMAR shall comply with all applicable portions of the Nevada Revised Statutes. The CMAR shall comply with Nevada Revised Statutes 338.1685 through 338.16995, inclusive regarding Construction Managers At Risk services and contracts.

1.12.3 The CMAR shall comply with Nevada Revised Statutes Section 338.125 (which pertains primarily to discrimination against employees and applicants because of race, creed, color, national origin, sex, or age). A violation of any provision contained in Nevada Revised Statutes Section 338.125 shall constitute a material breach of contract.

SECTION 2: THE CONTRACT DOCUMENTS

2.1 INTENT AND INTERPRETATION

2.1.1 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. In the event that the terms, provisions, conditions, specifications, or requirements contained in one contract document should conflict with those contained in another contract document, then such conflict shall be resolved in accordance with the following order of precedence:

- A. Owner-CMAR Construction Agreement
- B. Supplemental CMAR General Conditions
- C. CMAR General Conditions of the Contract
- D. Change Orders
- E. Addenda to Specifications
- F. Addenda to Drawings
- G. Specifications
- H. Drawings

2.1.2 In the event of an inconsistency between or within any of the Contract Documents or between any of the applicable codes, the better quality or greater quantity of work shall be provided, at no additional cost to the Owner.

2.1.3 Specifications shall take precedence over notes on drawings. Large scale drawings shall take precedence over smaller scale drawings.

2.1.4 The Contract Documents are intended to include and require all items which are necessary for the proper execution and completion of the Work.

2.1.5 Interpretations of the Drawings and Specifications and their intent, which are necessary to the proper execution and completion of the Work will be made by the Architect. Words which have well known technical or trade meanings are to be interpreted in accordance with such recognized meanings.

2.1.6 The organization of the Specifications into divisions and sections, and the arrangement of the Drawings, shall not be construed to establish controls or limitations on the CMAR with regard to dividing the Work among Subcontractors, or in establishing the extent of work to be performed by any specific trade.

2.2 EXISTING CONDITIONS

- 2.2.1 It is the CMAR's responsibility to ascertain the existence of any existing conditions that may affect the cost of the proposed Work which could have been discovered by reasonable examination of the site.
- 2.2.2 No additional costs shall be allowed to the CMAR for existing conditions which could have been discovered by reasonable examination of the site.
- 2.2.3 Existing improvements visible at the job site, for which no specific disposition is made in the Contract Documents, but which could reasonably be assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the CMAR after written notification is given to the Owner.
- 2.2.4 The geotechnical report issued with the Contract Documents is provided for the CMAR's information and is not a Contract Document. The Owner does not guarantee the accuracy or completeness of the report and shall not be liable for any additional work or cost arising out of conclusions reached by the CMAR based upon the geotechnical report. The CMAR assumes all responsibility for any conclusions reached by the CMAR based on the geotechnical report.
- 2.3 REQUESTS FOR INFORMATION
- 2.3.1 No work shall be performed by the CMAR without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents. The CMAR shall, upon discovering any discrepancy, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to the Architect. The Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to the CMAR, but will take such action only after consultation with the Owner. Until such written instructions are given, any work done by the CMAR, either directly or indirectly relating to such discrepancy, conflict, or inconsistency will be at his own risk, and he shall bear all costs arising therefrom. The CMAR shall maintain a sequential log of all RFI's.
- 2.3.2 The CMAR shall report immediately to the Owner and the Architect any discrepancy, conflict, or inconsistency that he may discover, or should have discovered, in the Contract Documents. If the CMAR performs any work contrary to the Contract Documents, he shall be solely responsible and shall bear all costs attributable thereto.
- 2.3.3 Requests for Information shall be limited to one specific issue or group of related issues and shall not address multiple issues. The Architect will review and respond to RFI's within 3 days from the date that the RFI is received by the Architect. RFI's shall be issued by the CMAR to the Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Architect.
- 2.4 SUBMITTALS AND SHOP DRAWINGS
- 2.4.1 The CMAR shall review, stamp with his approval, 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.
- 2.4.2 The CMAR's schedule shall include reasonable and orderly dates for issuance of all major submittals, to allow for reasonable notice and staged delivery of submittals to the Architect, as required in Section 5.7.
- 2.4.3 The 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.
- 2.4.4 Submittals shall be properly identified as specified, or as the Architect may require. By approving and issuing submittals, the CMAR thereby represents that he has determined and has verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each submittal with the requirements of the Contract Documents.
- 2.4.5 The 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.

- 2.4.6 The review and approval of submittals by the Architect shall not relieve the CMAR of responsibility for any deviation from the requirements of the Contract Documents, nor shall review by the Architect relieve the CMAR from responsibility for errors or omissions in the submittals.
- 2.4.7 The 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. The CMAR shall identify in writing all revisions made, in addition to identifying the corrections requested by the Architect on previous submittals.
- 2.4.8 The number of submittals provided and approved shall include one set for use by the Owner.
- 2.4.9 None of the Work requiring submittals or shop drawings shall commence until the associated submittals have been reviewed and approved by the Architect.

2.5 SUBSTITUTIONS

- 2.5.1 The GMP and the Work shall be based on the products specified in the drawings and specifications. The specified products have been used in the design of the Project and in the preparation of the Drawings and Specifications, and as such establish minimum standards of function, dimension, appearance, and quality necessary for the Project. Equivalent products of other manufacturers may be acceptable, if, in the judgment of the Owner and the Architect, they meet the standards of the Contract Documents. The burden of proof of equality rests with the CMAR. The CMAR shall submit any requests for substitutions in writing to the Owner and the Architect within the time specified in Section 2.5.2. Submittals and shop drawings do not constitute a request for substitution. Products not specified or accepted in writing as equivalent to those specified shall not be installed. The CMAR shall be responsible for all costs associated with removal and replacement should the CMAR proceed with installation of any substituted product without specifically identifying the substitution and obtaining written approval of the substituted product.
- 2.5.2 Requests for substitutions must be submitted to the Owner and the Architect within 30 days after the Notice to Proceed date (or within the time period established in the Specifications, if that time period is shorter). Thereafter, substitutions will be considered only in cases of documented product unavailability or other conditions beyond the control and without the fault of the CMAR, or in special circumstances when allowed by the Owner and the Architect.
- 2.5.3 Final approval of all products shall be contingent on acceptance of the associated submittals and/or shop drawings, compliance with the Contract Documents, and acceptable installation. Approval to utilize a product does not relieve the CMAR of his responsibility to meet the requirements of the Contract Documents.

2.6 AS-BUILT DRAWINGS

- 2.6.1 The CMAR shall provide and maintain at the Project site one copy of all Contract Documents, in good order and marked to show clearly all changes and "as-built" conditions. The CMAR and his Subcontractors shall indicate daily on these documents all "as-built" conditions and revisions due to substitutions, field changes and Change Orders. The location of all concealed piping, conduit, fixtures, pull-boxes, and other similar installations, shall be clearly identified on these documents. Upon completion or termination of the Project, this set of documents shall be delivered to the Architect for utilization in preparation of the record drawings.
- 2.6.2 Progress payments may be reduced or withheld by the Owner in the event that as-built drawings are not kept current.

2.7 CHANGES IN THE WORK

- 2.7.1 A Change Order is an amendment to the Owner-CMAR Construction Agreement and is a written order to the CMAR signed by the Owner and the 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.
- 2.7.2 The Owner and the Architect shall have authority to order minor 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 the CMAR.

- 2.7.3 Should any event or circumstance occur that the CMAR believes may constitute a change in the Work entitling the CMAR to an adjustment to the Contract Sum or the Contract Time, the CMAR shall issue written notice and a request for a Change Order to the Owner within 7 days of the occurrence of such event or circumstance. Such written notice shall be issued by the CMAR for any event or circumstance that the 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. The 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 section (Section 2.7) shall constitute a waiver by the CMAR of the right to a Change Order.
- 2.7.4 The CMAR shall not proceed with changes to the Work without a Change Order or a Construction Change Directive. If the CMAR proceeds with changes to the Work without proper written approval, he does so at his own risk.
- 2.7.5 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:
- A. By unit prices stated in the Contract Documents or subsequently agreed upon.
 - B. By a lump sum proposal, which is mutually accepted, properly itemized, and which shall include the following:
 - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
 - 2. Materials entering permanently into the Work, including sales tax.
 - 3. Equipment costs for equipment utilized to perform the Change Order work.
 - C. By a not-to-exceed maximum cost, based on the actual cost of time and materials, properly itemized and verified which shall include the following:
 - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
 - 2. Materials entering permanently into the Work, including sales tax.
 - 3. Equipment costs for equipment utilized to perform the Change Order work.
- 2.7.6 The costs for changes in the Work may be increased to include applicable taxes, insurance, bonding, and a fixed mark-up for Subcontractor profit and overhead, CMAR profit and overhead on Subcontractor work, and profit and overhead on work done by the CMAR's own forces. This fixed mark-up shall not exceed the amounts stipulated below for a single Change Order item, or for any group of related items, and shall be full compensation for the cost of overhead and profit related to the Change Order. CMAR shall not be entitled to additional costs for supervision or field office personnel due to a change, unless that change includes additional time. In that case, the CMAR shall be allowed to calculate costs for supervision and field office personnel who are directly attributable to the change. Administration or preparation costs shall not be allowed, and no other costs or expenses are agreed to unless otherwise agreed to in writing.

Change Order Item Amount (Prior to Mark-Up) Mark-Up

Portion from \$0 to \$50,000	15%
Portion over \$50,000	10%

- 2.7.7 Execution of a Change Order 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 Change Order. The CMAR may not reserve the right to make further claims with regard to any executed Change Order. Any attempt by the CMAR to reserve such a right shall be considered invalid and unenforceable.
- 2.7.8 All requests for changes in the Work shall be submitted to the Owner and the Architect in sufficient detail to allow a complete analysis of all proposed costs. The CMAR shall, upon request by the Owner or the Architect, submit invoices for materials and equipment utilized in Change Order work. Labor rates, including fringe benefits, shall be in conformance with the applicable prevailing wage rates for this Project.
- 2.7.9 The CMAR shall, upon request by the Owner or the Architect, submit detailed rationale and justification for labor rates utilized in Change Order work.
- 2.7.10 The CMAR will not be entitled to a Change Order for any work that reasonably could have or should have been identified as necessary during the CMAR's participation in the design review process as defined in the Owner-CMAR Pre-Construction Agreement.

2.8 CONSTRUCTION CHANGE DIRECTIVES

- 2.8.1 A Construction Change Directive is a written directive to the CMAR, signed by the Owner and the Architect, which shall serve as formal and binding direction for the CMAR to proceed with a defined change in the Work. The directive may be implemented when deemed necessary as an interim action until a Change Order can be formally assessed and executed. Upon receipt of a Construction Change Directive, the CMAR shall promptly proceed with the directed changes.
- 2.8.2 The Owner, without invalidating the Contract, may order changes in the Work utilizing a Construction Change Directive with the Contract Sum and/or the Contract Time being adjusted as deemed appropriate. The CMAR shall comply with the provisions of Paragraph 2.7.3 in the event that the CMAR believes that a Construction Change Directive has a potential impact on the Work.

2.9 CMAR'S USE OF CONTRACT DOCUMENTS

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

SECTION 3: THE CONTRACT

3.1 GENERAL

- 3.1.1 The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral.
- 3.1.2 The Contract shall not be binding on either the Owner or the CMAR until the Owner-CMAR Construction Agreement and the Performance and Payment Bonds have been properly executed and submitted, and the Owner-CMAR Construction Agreement has been approved and signed by the Chairman of the **OWNER of AWARDDING BODY**, or his designated representative.
- 3.1.3 Execution of the Owner-CMAR Construction Agreement shall constitute the CMAR's representation, under penalty of perjury, that the CMAR has carefully examined the contents of all Contract Documents, that he has read and understands the same, and specifically agrees to be bound thereby. Additionally, execution of the Owner-CMAR Construction Agreement by the CMAR shall represent that he has inspected the site, familiarized himself 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.
- 3.1.4 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and the CMAR, between the Owner and a Subcontractor, or between any persons or entities other than the Owner and the CMAR. The Architect shall, however, have authority to act on behalf of the Owner, to the extent provided in the Contract Documents.
- 3.1.5 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.
- 3.1.6 The Contract Sum is the sum stated in the Owner-CMAR Construction Agreement and is the total dollar amount payable by the Owner to the CMAR for the complete and approved performance of the Work in strict accordance with the Contract Documents.
- 3.2 CONTRACT TIME
- 3.2.1 The Contract Time is the period of time, in calendar days, allotted in the Contract Documents for the completion of the Work. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.
- 3.2.2 The date of commencement of the Work is the date established in the Notice to Proceed letter issued by the Owner, or the date of the permit(s), whichever is later.
- 3.2.3 The CMAR shall begin the Work on the starting date established in the Notice to Proceed letter. He shall perform the Work expeditiously with adequate forces and shall complete the Work within the Contract Time.
- 3.2.4 Unless otherwise agreed upon, normal working days are considered to be Monday through Friday, excluding holidays, between the hours of 6:00 a.m. and 4:00 p.m. If the CMAR desires to work on any weekend day, holiday, or during any other hours of the day he shall request and obtain the Owner's written approval at least 5 days in advance of the requested deviation.

- 3.2.5 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.
- 3.2.6 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 weather. The CMAR shall include adequate float or other allowance in his construction schedule to accommodate weather conditions that may be associated with weather dependent work. An extension to the Contract Time will be considered only in a case where an abnormal or unusual weather delay has occurred.
- 3.2.7 The Contract Sum is based on the Contract Time specified in the Owner-CMAR Construction Agreement and shall not be based on an early completion schedule. No additional compensation shall be granted to the CMAR for delays to an early completion schedule and any such claim is hereby waived.

3.3 CONTRACT TIME EXTENSIONS

- 3.3.1 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.
- 3.3.2 All requests by the CMAR for extensions of the Contract Time due to delays to the Work shall be made in writing to the Owner and the Architect within 10 calendar days after the start of the delay. Each 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 the CMAR of his right to an extension of the Contract Time on the basis of this event or issue.
- 3.3.3 If the CMAR is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, by any separate contractor employed by the Owner, or by circumstances that are agreed to be beyond the control and without the fault of the CMAR and his Subcontractors and suppliers, the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.
- 3.3.4 The CMAR shall not claim or be entitled to any compensation or damages from the Owner because of delay caused by the Owner, the Architect, or any person working for either of them, and any claim therefore is hereby waived, with the exception of general conditions for extended time properly itemized. The CMAR's sole remedy shall be an extension of time to complete the Work as provided in the Contract Documents, except that the Owner agrees to compensate the CMAR for any damages resulting from any affirmative, willful act in bad faith performed by the Owner or his employees which unreasonably interferes with the CMAR's ability to complete the Work within the Contract Time.
- 3.3.5 For cumulative delays that total 5 days the CMAR may request an additional 2 days to account for the associated non-working weekend days. Should the 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 non-working day(s) may be added to the Contract Time such that the Contract Time ends on a working day.
- 3.3.6 Extensions to the Contract Time will not be allowed for delays that do not affect the critical path for completion of the Work.

3.3.7 Extensions to the Contract Time will not be allowed for delays which could have been avoided by the exercise of care, prudence, foresight, and/or diligence by the CMAR, or for delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

3.4 SUBSTANTIAL COMPLETION

3.4.1 Substantial Completion is 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 the Owner can occupy and/or utilize the Work (or portion thereof) for its intended use. The Work will not be considered substantially complete if any of the following conditions exist:

- A. Any of the Work is incomplete or defective which, in the opinion of the Owner, would prevent or interfere with occupancy and/or full use of the facility.
- B. The Project's mechanical systems have not been tested, balanced, and accepted as being fully complete (including commissioning when applicable).
- C. The Project's electrical and life safety systems have not been tested and accepted as being fully complete (including commissioning when applicable).
- D. Final clean-up is not complete.

3.4.2 The following procedure shall be used in establishing Substantial Completion of the Work, unless otherwise agreed to in writing:

- A. When the CMAR determines that the Work, or a portion thereof, which the Owner agrees to accept separately, is substantially complete, the CMAR shall submit written notice thereof to the Owner and the Architect, and shall include a punch list of all items which remain to be completed or corrected. Failure to include any items on the list does not alter the CMAR's responsibility to complete all of the Work in accordance with the Contract Documents.
- B. Inspections for Substantial Completion may be requested by the CMAR only after the status of completion has been reviewed and assessed by the Owner's/Architect's Inspector. Upon such review the Inspector will issue a list of any observed code deficiencies or life-safety deficiencies that affect the issuance of a Certificate of Substantial Completion.
- C. If the Owner and the Architect, on the basis of an on-site inspection, agree that the Work is substantially complete, the Architect may provide the CMAR with a list of additional corrective items which shall be added to the CMAR's and the Authority Having Jurisdiction Inspector's punch lists.
- D. If the Owner and the Architect, on the basis of an on-site inspection, determine that the Work is not substantially complete, the Architect will notify the CMAR in writing, and will provide a list of observed deficiencies. The CMAR shall remedy the deficiencies and submit another written request for Substantial Completion.
- E. When the Owner and the Architect determine that the Work is substantially complete, the Owner will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the CMAR for maintenance, heat, utilities, and insurance, and fix the time within which the CMAR shall complete the punch list items that are attached to the Certificate of Substantial Completion.

F. The Certificate of Substantial Completion shall be signed by the Owner and the CMAR as their written acceptance of the responsibilities assigned to them in such Certificate.

3.4.3 No payment, nor any use or occupancy of the Project, or any portion thereof, by the Owner, shall constitute an acceptance of any of the Work that is not in accordance with the Contract Documents, nor shall it relieve the CMAR of full responsibility for correcting defective work or materials found at any time prior to completion of the entire Project or during the guarantee period.

3.5 FINAL COMPLETION

3.5.1 When the CMAR considers the Work fully completed, he shall submit written notice to the Owner and the Architect confirming all of the following:

A. The Work has been fully completed in accordance with the Contract Documents and is ready for final inspection.

B. All punch list items have been corrected or completed.

C. All equipment and systems have been tested, adjusted, and balanced and are fully operational.

D. All operation and maintenance manuals and training required by the Contract Documents have been provided.

E. All as-built drawings and operation and maintenance manuals have been submitted to the Architect in accordance with the Contract Documents.

F. All guarantees, warranties, and surety releases required by the Contract Documents have been submitted to the Owner.

3.5.2 The Architect and Owner will perform a final inspection of the Work. If the Work is found to be incomplete or defective, the CMAR will be notified in writing and provided with a list of observed deficiencies. The Owner may withhold such payment as deemed appropriate to ensure the correction of the deficiencies. Should the CMAR fail to promptly correct the deficiencies noted in the final punch list, the Owner may, upon 7 day written notice to the CMAR, hire another contractor to correct such deficiencies, notify the CMAR's Surety, and/or otherwise complete or correct the listed deficiencies, at the CMAR's expense.

3.5.3 When the Work and provisions of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim relating or pertaining to the Work.

3.6 GUARANTEES AND WARRANTIES

3.6.1 The CMAR and his Surety shall unconditionally warrant and guarantee all workmanship and materials incorporated in the Work to be and remain free of defects for a period of one year from the date of the Certificate of Substantial Completion, or for such longer periods as stipulated in the Contract Documents.

3.6.2 When the Work, or a portion thereof, is accepted as being substantially complete, the guarantee period will commence on the date of the Certificate of Substantial Completion for the completed portion of the Work.

- 3.6.3 Within the one year guarantee period, and for such longer periods as specified in the Contract Documents, the CMAR and/or his Surety shall promptly remedy any defects in the Work, and pay for any damage to other work resulting therefrom. The Owner shall notify the CMAR in writing of observed defects with reasonable promptness. The CMAR shall ensure that the corrective work is commenced within 7 days of such notice and completed in an expeditious and timely manner.
- 3.6.4 The obligations of the CMAR herein shall be in addition to and not in limitation of any obligation imposed upon him by law.
- 3.6.5 The CMAR and requested Subcontractors shall attend a warranty inspection that will be scheduled by the Owner for a date approximately 10 months after the date of the Certificate of Substantial Completion. The CMAR shall take immediate action to remedy, at no cost to the Owner, all warranty items identified during the inspection.
- 3.7 LIQUIDATED DAMAGES
- 3.7.1 It is hereby mutually understood and agreed, by and between the CMAR and the 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.
- 3.7.2 The 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.
- 3.7.3 If the CMAR shall neglect, fail, or refuse to achieve Substantial Completion of the Work within the Contract Time, then the CMAR and his Surety do hereby agree, as part of the consideration for the Contract, to pay to the Owner, not as a penalty, but as liquidated damages, the amount of money specified in the Owner-CMAR Construction Agreement 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.
- 3.7.4 The CMAR and the 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. Accordingly, the CMAR, his Surety, and the Owner agree that the amount specified in the Owner-CMAR Construction Agreement for liquidated damages is the appropriate and best estimate of the damages that would actually be incurred by the Owner should the Work not be completed within the Contract Time.
- 3.7.5 Should the remaining balance of the Contract Sum be insufficient to cover the specified liquidated damages due the Owner, then the Owner shall have the right to recover such damages from the CMAR and/or his Surety.
- 3.7.6 Liquidated damages shall cease to be assessed on the date that Substantial Completion is achieved provided the CMAR completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If the 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.
- 3.8 CLAIMS FOR DAMAGES
- 3.8.1 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 any of his employees, agents, or others for whose acts he is legally

liable, claim shall be made in writing to such other party within 7 days after the first knowledge of such injury or damage.

3.8.2 Any costs to the Owner caused by defective or ill-timed work performed by the CMAR shall be paid by the CMAR.

3.8.3 Owner & CMAR agree to waive any claims or damages incurred for consequential damages arising out of or related to this Agreement, including but not limited to, last profits, home office overhead, or any form of overhead not directly incurred at the project site; wage or salary increases; ripple or delay damages; loss of productivity; increased cost of funds for the project extended capital cost; lost opportunity to work on other projects; inflation costs of labor, material, or equipment, non-availability of labor, material, or equipment due to delays; increased cost of bonding due to delay; or any other indirect loss arising from the conduct of the parties to this Agreement.

3.9 DISPUTE RESOLUTION

3.9.1 In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be commenced and concluded utilizing a mediator acceptable to the Owner and the CMAR prior to pursuing either arbitration or legal action. Fees for mediation shall be shared equally between the Owner and the CMAR.

3.9.2 All claims, disputes, and other such matters arising out of, or relating to the Contract, or breach thereof, which arise prior to the termination of the guarantee period specified in the Contract Documents and not otherwise resolved, will be decided by arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or the Nevada Arbitration Association, as required by Nevada Revised Statutes Section 338.150.

3.10 TERMINATION BY THE CMAR

3.10.1 The CMAR may, upon 7 days written notice, terminate the Contract after the Work is stopped for a period of 60 consecutive days through no act or fault of the CMAR, 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.

3.10.2 If the CMAR terminates the Contract under the terms of the previous paragraph, he may recover from the Owner payment for work completed and approved, including reasonable overhead, profit, and termination costs. The CMAR will not be entitled to overhead and profit on any unperformed work.

3.11 TERMINATION BY THE OWNER

3.11.1 If the CMAR is adjudged bankrupt, if he makes a general assignment for the benefit of his creditors, if a receiver is appointed on account of his insolvency, if he persistently or repeatedly refuses or fails to supply an adequate number of properly skilled workmen, proper supervision, or proper materials, if he fails to make prompt payment to Subcontractors or to suppliers for materials or labor, if he disregards any law, ordinance, rule, regulation, or order of any public authority having jurisdiction, or otherwise breaches the Contract, then the Owner may, without prejudice to any other right or remedy, and after giving the CMAR and his Surety 7 days written notice, terminate the employment of the CMAR.

3.11.2 Upon such termination by the Owner, the Owner may take possession of the site and of all materials, equipment, tools, and machinery thereon owned by the CMAR and may finish the Work by whatever method he may deem expedient.

- A. Should the Owner terminate the Contract for any of the aforementioned reasons, the CMAR shall not be entitled to receive any further payment until the entire Work is fully complete and the actual amount due the CMAR can be properly determined.
- B. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR or his Surety shall promptly pay the difference to the Owner.

3.11.3 The Owner expressly reserves the right to terminate the Contract at any time due to a national emergency, court injunction, or for any reason determined to be in the best interest of **OWNER**, by giving the CMAR 7 days written notice. The CMAR shall be paid for work completed and approved, including reasonable overhead, profit, and termination costs. The CMAR will not be entitled to overhead and profit on any unperformed work.

3.12 SEPARATE CONTRACTS

3.12.1 The Owner reserves the right to award other separate contracts in connection with other portions of the Project.

3.12.2 The CMAR shall afford the 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 his work with theirs.

3.12.3 If any part of the CMAR's work depends on the proper execution of the work of any separate contractor, the CMAR shall inspect and promptly report to the Owner and the Architect in writing any discrepancies or defects in such other work. Failure of the CMAR to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his work, except as to defects which may develop in the other separate contractor's work after the execution of the CMAR's work.

3.12.4 The 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. The CMAR shall not endanger or alter the work of any other contractor.

3.12.5 Should the CMAR cause damage to the work or property of any separate contractor on the Project, the CMAR shall, upon written notice, settle with the other contractor. If the separate contractor sues the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR who, at his 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 the Owner arising therefrom.

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

3.13 ASSIGNMENT

3.13.1 The CMAR binds himself and each of his partners, successors, assigns and legal representatives to the Owner and to the Owner's partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. He shall not assign or sublet the Contract, in whole or in part, without the written consent of the Owner, nor shall the CMAR

assign any monies due or to become due to him hereunder, without the prior written consent of the Owner.

3.14 SEVERABILITY

3.14.1 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.

3.15 INDEMNIFICATION

3.15.1 To the fullest extent permitted by law, the CMAR shall protect, defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against any and all claims, damages, losses, and expenses, including, but not limited to attorneys' fees and cost arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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 paragraph.

3.15.2 The CMAR, his Subcontractors and anyone directly or indirectly employed by them, waive all rights of subrogation against the Owner, the Owner's officers, agents, and employees, and the Architect, the Architect's officers, agents, and employees, for losses arising from the Work.

3.15.3 In any and all claims against the Owner or the Architect or any of their officers, agents, or employees by any employee of the CMAR, 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 hereunder 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 CMAR or any Subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts.

3.15.4 Obligations of the CMAR hereunder shall not extend to the liability of the Architect, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or the giving of or the failure to give directions or instructions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

3.15.5 Obligations of the CMAR hereunder shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist pertaining to a party or person described herein. This indemnification obligation shall not be diminished or limited in any way by the limits of insurance required in this Contract or otherwise available to the CMAR or Subcontractors.

3.15.6 All indemnification obligations of the CMAR in the Contract Documents shall survive final payment.

3.16 OWNER OVERSIGHT OF CMAR BIDDING PROCEDURES

3.16.1 The CMAR agrees to coordinate with, document, and disclose to the Owner all bidding and contracting procedures utilized in negotiating with and contracting with the subcontractors and suppliers. The CMAR shall ensure compliance with NRS 338.0117.

- 3.16.2 The CMAR shall obtain a minimum of 3 bids on all items of work unless a lesser number of bids is deemed acceptable and is approved by the Owner.
- 3.16.3 The CMAR shall demonstrate to the satisfaction of the Owner that he has adequate previous experience on any work that he intends to self-perform and shall also provide evidence that his proposed cost for such work is lower than the other bids received for that work.
- 3.16.4 If the CMAR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after a 7 day written notice to the CMAR, and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CMAR the cost of correcting such deficiencies, including the cost of the additional professional services made necessary by such default, neglect, or failure. If the payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall immediately pay the difference to the Owner.

SECTION 4: THE OWNER

4.1 OWNER'S RESPONSIBILITIES

- 4.1.1 The Owner will provide general administration of the Contract, including performance of the functions described in this Section (Section 4), provided that such general administration shall not relieve the CMAR of complete responsibility for the means and methods of construction and performance of the Work in accordance with the Contract Documents.
- 4.1.2 The Owner shall furnish site surveys describing the topography and physical characteristics, legal limits, and utility locations for the Project site.
- 4.1.3 Except for permits and fees which are the responsibility of the CMAR under the Contract Documents, the Owner shall secure and pay for easements and utility connection fees for permanent structures or for permanent changes in existing facilities.
- 4.1.4 Information or services under the Owner's control shall be furnished by the Owner within a reasonable time to avoid delays in the orderly progress of the Work.
- 4.1.5 Prior to the start of construction, the Owner shall obtain all land and rights-of-way necessary for the carrying out and completion of the Work.
- 4.1.6 In case of termination of the employment of the Architect, the Owner shall appoint a replacement whose status under the Contract Documents shall be that of the former Architect.
- 4.1.7 The Owner will issue the Notice to Proceed and Certificate of Substantial Completion.
- 4.1.8 The foregoing are in addition to other duties, responsibilities, and rights of the Owner enumerated throughout the Contract Documents.

4.2 OWNER'S AUTHORITY

- 4.2.1 The Owner and his representatives shall at all times have access to the Work whenever it is in preparation or progress, and the CMAR shall provide proper equipment and facilities for such access and inspection. If any work is required to be tested or approved, the CMAR shall give the Owner timely notice of its readiness for inspection. Neither the observations of the Owner or the Architect in the

general administration of the Contract, nor any inspections, tests, or approvals shall relieve the CMAR from his obligation to perform the Work in accordance with the Contract Documents.

- 4.2.2 Should the Owner or the Architect determine that the CMAR has proceeded with work that does not comply with the Contract Documents, the CMAR shall be required to correct such work at his own expense.
- 4.2.3 The Owner will not be responsible for the acts or omissions of the CMAR or any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.
- 4.2.4 If the CMAR fails to carry out the Work in accordance with the Contract Documents or fails to correct work which is not in accordance with the Contract Documents, the Owner, by written notice, may order the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The CMAR shall not be entitled to any compensation or to any additional time for such work stoppage.

SECTION 5: THE CONSTRUCTION MANAGER AT RISK (CMAR)

5.1 GENERAL

- 5.1.1 The CMAR shall carefully study and compare all parts of the Contract Documents with each other and with all information furnished by the Owner and shall immediately report any discrepancies, conflicts, or inconsistencies that he discovers in writing to the Owner and the Architect. The CMAR shall not be liable to the Owner and/or the Architect for any damages resulting from discrepancies, conflicts, or inconsistencies in the Contract Documents unless the CMAR recognized, or should have recognized such discrepancies, conflicts, or inconsistencies and failed to report them to the Owner and the Architect.
- 5.1.2 No mobilization shall commence and no work shall be performed until all required insurance certificates have been provided to the Owner.
- 5.1.3 If the CMAR performs any work knowing that it involves a recognized discrepancy, conflict, or inconsistency in the Contract Documents, without specific notice to the Owner and the Architect, the CMAR shall assume all responsibility for such performance, including but not limited to, any and all costs for correction.
- 5.1.4 The CMAR shall submit cost proposals, progress schedules, payrolls, reports, estimates, records, and other data as the Owner or Architect may request concerning work performed, or to be performed under the Contract.

5.2 CMAR'S RESPONSIBILITIES

- 5.2.1 The CMAR shall perform and complete the Work in a timely and workmanlike manner and in strict conformance with the Contract Documents.
- 5.2.2 The CMAR shall prepare and submit daily reports to the Owner and the Architect within two days of the reported day. Reports shall include workers on site, work performed, weather conditions, material and equipment deliveries, outstanding issues, and pending RFI's.
- 5.2.3 The CMAR shall supervise and direct all portions of the Work. He shall be solely responsible for all construction procedures, methods, techniques, sequences, and safety, and for coordinating all portions of the Work to comply with the Contract Documents. He shall be responsible for the acts and omissions

of his employees and Subcontractors, their agents and employees, and all other persons performing any of the Work.

- 5.2.4 The CMAR and each Subcontractor shall have and maintain a State of Nevada Contractor's license in good standing for the entire duration of the Work.
- 5.2.5 The CMAR shall at all times enforce good discipline and order among his employees and Subcontractors and shall, at his own cost, provide the security necessary to adequately protect the Work.
- 5.2.6 The CMAR shall at all times, and at his own cost, safely guard and protect the Owner's property, the Work, and all property adjacent to the Project, from damage, injury, or loss in connection with the Project and shall replace or make good any such damage, injury, or loss. The CMAR shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities.
- 5.2.7 The CMAR shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work.
- 5.2.8 In the event of a temporary suspension of the Work, and/or during inclement weather, the CMAR shall protect, and shall cause his Subcontractors to protect the Work and materials against damage, injury, or loss. If any work or materials become damaged, injured, or lost due to any cause, such work and materials shall be removed and replaced at the expense of the CMAR.
- 5.2.9 CMAR has represented it is qualified to receive a preference in bidding pursuant to Chapter 338 of the Nevada Revised Statutes, and as such has agreed to comply with all terms and conditions set forth in NRS 338.0117 which are incorporated herein by this reference. CMAR shall submit to Owner a signed affidavit certifying for the duration of the project:
- (a) At least 50 percent of all workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver's license or identification card issued by the Department of Motor Vehicles;
 - (b) All vehicles used primarily for the public work will be: (1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or (2) Registered in this State;
 - (c) At least 50 percent of the design professionals working on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will have a valid driver's license or identification card issued by the Department of Motor Vehicles;
 - (d) At least 25 percent of the suppliers of the materials used for the public work will be located in this State unless the public body requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and
 - (e) The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

Failure to comply with these provisions is a material breach of the Agreement and state law and will subject CMAR to the liquidated damages provided in NRS 338.0117 in addition to default remedies under this Agreement.

5.3 SUPERINTENDENT

5.3.1 The CMAR shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site throughout the progress of the Work. The superintendent and assistants shall be satisfactory to the Owner, and shall not be changed except with the written consent of the Owner. The superintendent shall represent the CMAR and have full authority to act on his behalf.

5.4 LABOR AND MATERIALS

5.4.1 Unless otherwise specifically stated in the Contract Documents, the CMAR shall provide and pay for all labor, materials, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction services, procedures, and facilities of every nature required to properly execute and complete the Work in accordance with the Contract Documents. All materials shall be installed in strict compliance with the Contract Documents and the recommendations of the manufacturer.

5.4.2 The CMAR shall not employ or contract with any firm or organization that is unfit or unskilled in the work to be performed. The CMAR shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, race, color, creed, or national origin. The CMAR shall comply with and shall require his Subcontractors to comply with all applicable provisions of Nevada Revised Statutes Title 28 (Public Works and Planning) and Nevada Revised Statutes Title 53 (Labor and Industrial Relations).

5.4.3 When required by the Contract Documents, the CMAR shall ensure that all employees on the Project are paid in accordance with the Prevailing Wage Rates as published in the Contract Documents and as issued by the State Labor Commission for the area or place of the Work. The CMAR shall forfeit, by deductive Change Order, the amounts stipulated in Nevada Revised Statutes Section 338.060, should the CMAR fail to comply with any of the applicable prevailing wage rate requirements.

5.4.4 All work performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to the Owner.

5.4.5 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the CMAR shall furnish evidence, satisfactory to the Owner, as to the type and quality of all materials and equipment.

5.4.6 No materials or equipment for the Work shall be purchased by the CMAR, nor shall the CMAR permit any Subcontractor to purchase materials or equipment, that are subject to any chattel mortgage, or are under a conditional sale contract or other security agreement by which any right, title, or interest is retained by the seller.

5.4.7 All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the CMAR. Such certificates shall be executed by qualified firms acceptable to the Owner, shall include all information required by the Contract Documents, and shall clearly refer specifically to the relevant materials and/or equipment.

5.5 TEMPORARY UTILITIES

- 5.5.1 The CMAR shall be solely responsible for providing all necessary temporary utilities. The 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. The Owner will not be responsible for any delays or costs related to obtaining temporary utilities.
- 5.5.2 Temporary utilities may be connected to the Owner's existing metered utilities only with the Owner's and utility company's written authorization. Any connection to the 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 the Owner in writing. Temporary meters shall be removed upon completion of the Work.
- 5.5.3 The 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 the 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 Section 3.4 of these General Conditions.

5.6 EMERGENCIES

- 5.6.1 In case of an emergency which threatens loss or damage to property, personal injury, or life safety, the CMAR shall immediately take all feasible actions to prevent or mitigate such loss, damage, injury or death, without awaiting instructions from the Owner or the Architect. The CMAR shall notify the Owner and the Architect in writing of such emergency at the first feasible opportunity.
- 5.6.2 The amount of reimbursement claimed by the CMAR on account of any emergency action shall be determined in the manner provided herein for claims.
- 5.6.3 The CMAR shall maintain a current emergency telephone number list at the job site. The list shall include telephone numbers for the 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 the CMAR's field office.

5.7 CONSTRUCTION SCHEDULE

- 5.7.1 Within 30 days after issuance of the Notice to Proceed and prior to issuing any progress payment application, the CMAR shall submit a construction schedule to the Owner and the Architect for review. 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.
- 5.7.2 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 the 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 shall be promptly updated as necessary to reflect the work required to implement each change order 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 the Architect.

5.7.3 For projects with a Contract Sum of \$10,000,000 or greater, the CMAR shall utilize a form of project planner software acceptable to the Owner 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 the Owner, the CMAR shall provide prompt responses to any questions regarding reasons or causes for changes to the construction schedule.

5.7.4 The CMAR shall submit a current/updated construction schedule with each Progress Payment Application. Failure by the CMAR to provide a current construction schedule shall be justification for the Owner to withhold approval or reduce the amount of the payment due the CMAR.

5.7.5 In the event of any failure to adhere to the construction schedule the CMAR shall, within 14 days of written notice from the Owner, provide a recovery schedule for review by the Owner and the Architect. The recovery schedule shall identify how the CMAR proposes, at his sole expense, to overcome the associated delays and complete the Work within the Contract Time. Such notice from the Owner shall not constitute either actual or implied direction for the CMAR to accelerate the Work.

5.8 CONSTRUCTION PROGRESS MEETINGS

5.8.1 The CMAR shall attend a weekly coordination meeting at the Project site, to be attended by the CMAR's Project Manager and Superintendent, the Architect, the Owner's designated representatives, and appropriate Subcontractors. Such meetings may be scheduled at less frequent intervals, if agreed upon in writing by the Owner and the CMAR.

5.8.2 The Architect will conduct the job-site construction progress meetings and will prepare and distribute typed meeting minutes for each such meeting.

5.9 PROGRESS PHOTOGRAPHS

5.9.1 The CMAR shall take not less than twelve progress photographs of the Work each month at a minimum resolution of 640 by 480 pixels. The photographs shall be taken with the intent of providing a clear and complete depiction of overall Project progress. Each photograph is to be clearly marked with the time, date, location/view and other details sufficient to identify the subject. Camera view/locations shall be coordinated with and approved by the Owner or the Architect. Progress photos shall be stored on a digital video disk (DVD disk) and issued to the Owner along with each progress payment application.

5.10 TAXES, PERMITS, FEES AND NOTICES

5.10.1 The CMAR shall pay all sales, consumer, use, and other taxes required by law.

5.10.2 The CMAR shall secure and pay for all construction-related permits, fees, and licenses necessary for the proper execution and completion of the Work, including, but not limited to, dust control permits, storm water mitigation permits, and utility tap fees and permits. The CMAR shall not be required to pay for a municipal or county building permit, or permanent utility usage fees.

5.10.3 The CMAR shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work and of the Using Agency. If the CMAR discovers that any of the Contract Documents are at variance therewith, he shall immediately notify the Owner and the Architect in writing. If the CMAR performs any work which he knows or should have known to be contrary to such laws, ordinances, rules, and regulations, or orders, without such written notice and

written instruction from the Owner or Architect, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

5.11 PROJECT SIGN

5.11.1 Upon commencing the Work the CMAR shall erect one painted project sign, 4 feet by 8 feet, in the format directed by the Owner. This sign shall be the only CMAR sign displayed on the Project site.

5.12 ACCESS ROADS

5.12.1 The CMAR shall use designated access roads as directed by the Owner, and the CMAR shall keep these roads passable at all times. The CMAR shall be entirely responsible for any damage to roads, trees, shrubs, gates, fences, grass, curbs, gutters, and driveways due to construction usage. All damaged portions shall be restored by the CMAR, at his own cost, to the same condition as existed before the commencement of the Work.

5.12.2 Dirt roads shall be periodically sprinkled with water when dust conditions create an on site or off site hazard or nuisance to workmen, neighboring properties, or the public in general. The CMAR shall secure and pay for any dust control permits required by State or local jurisdictions.

5.13 CMAR'S FIELD OFFICE

5.13.1 Not used.

5.13.2 The 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.

5.13.3 The temporary field office shall remain the property of the CMAR, and shall be completely removed at the completion of the Project.

5.14 OWNER'S FIELD OFFICE

5.14.1 Not used.

5.15 TOILET FACILITIES

5.15.1 The CMAR shall provide and maintain in a clean and sanitary condition in a weatherproof building satisfactory toilet accommodations for all workmen and for use by the Owner's representatives. 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.

5.16 PATENTS AND ROYALTIES

5.16.1 The CMAR shall defend and hold harmless the Owner and his officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of claimed infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents. If the CMAR uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that without exception, the Contract Sum includes all royalties or costs arising from the use of any such design, device, or materials in the Work.

5.17 CONSTRUCTION SURVEYS

5.17.1 Unless otherwise expressly provided for in the Contract Documents, the CMAR shall furnish and pay for all construction surveys necessary for execution of the Work or required by the Contract Documents.

5.18 SUBSURFACE CONDITIONS

5.18.1 Should the CMAR encounter subsurface or latent conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately give written notice to the Owner and the Architect of such conditions before they are disturbed. The Architect will investigate the conditions, and if he finds that they materially differ, he will, after consultation with the Owner, make such changes in the Contract Documents as he may deem necessary. Any increase or decrease in cost resulting from such changes will be adjusted by Change Order.

5.18.2 The CMAR shall perform all work in strict conformance with the current 'Call Before You Dig' program applicable at the location of the Project.

5.19 ARCHAEOLOGICAL FINDINGS

5.19.1 Any historic, prehistoric, archeological evidence, or artifacts discovered on the site shall remain undisturbed and shall be reported immediately to the Owner in writing. Any such findings are the property of the Owner.

5.20 MATERIALS TESTING

5.20.1 Testing of construction materials delivered to the job site shall be carried out by the Owner unless otherwise required in the Contract Documents. The Owner shall select the testing laboratory or inspection agency to carry out this work. The purpose of such testing is to verify conformity of materials and/or equipment with the Contract Documents. Where tests indicate conformity, costs of testing will be paid by the Owner; where tests indicate non-conformance, costs of re-testing will be paid by the CMAR by deductive Change Order.

5.20.2 If special inspection or testing requirements are established by any of the Contract Documents, performance of and payment for such inspection or testing shall be as specifically stated therein. If the manner of payment is not specified or if there is no mention of such inspection or testing in the Contract Documents, but such inspection is judged necessary by the Owner, then the Owner shall pay the cost thereof. The CMAR shall cooperate toward minimizing the cost of such inspection and testing.

5.20.3 All testing and inspection carried out by the Owner is for the benefit of the Owner and not the CMAR. No failure of any testing laboratory or inspection agency retained by the Owner shall relieve the CMAR of his responsibility to complete the Work in accordance with the Contract Documents.

5.21 OPERATION AND MAINTENANCE MANUALS

5.21.1 Prior to substantial completion of the Project, the CMAR shall submit to the Architect, a sample of each Operation and Maintenance Manual for equipment and/or materials incorporated into the Work. Upon approval by the Architect, the CMAR shall furnish to the Owner, three bound and indexed copies of the approved Operation and Maintenance Manuals. Operation and Maintenance Manuals shall be incorporated into three-ring binders with a typed index and tabbing as necessary for identification of all appropriate sections.

5.22 CORRECTION OF WORK

- 5.22.1 If any work should be covered prior to either a specified or a requested inspection, the CMAR shall uncover the work for observation and if found to be defective or nonconforming shall replace the work at no cost to the Owner.
- 5.22.2 If any work has been covered which the Owner or the Architect has not specifically requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the CMAR. If the uncovered work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If the uncovered work is not in accordance with the Contract Documents, the CMAR shall pay such costs.
- 5.22.3 The CMAR shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after the Certificate of Substantial Completion is issued, and whether or not fabricated, installed, or completed. The CMAR shall bear all costs of correcting such rejected work, including, but not limited to, the cost for additional professional services.
- 5.22.4 The CMAR shall bear all costs associated with making good all work of separate contractors destroyed or damaged by removal or correction.
- 5.22.5 If the CMAR does not remove defective or non-conforming work immediately upon written notice, the Owner may remove it and may store the materials or equipment at the expense of the CMAR. If the CMAR does not pay the cost of such removal and storage immediately upon written notice, the Owner may sell such work at auction or at private sale to recover the related costs. If such proceeds do not cover all related costs incurred by the Owner the difference shall be charged to the CMAR and an appropriate Change Order shall be issued.
- 5.22.6 If the CMAR fails to correct defective or non-conforming work, the Owner may correct it at the CMAR's expense.
- 5.22.7 If the Owner prefers to accept non-conforming work, he may do so instead of requiring its removal or correction, in which case an appropriate reduction will be made to the Contract Sum, or, if the amount is determined after final payment, such amount shall be paid to the Owner by the CMAR immediately upon written notice.
- 5.22.8 All damage or loss to any property caused in whole or in part by the CMAR, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the CMAR, except damage or loss attributable to errors and/or omissions in the Contract Documents.
- 5.23 SUBCONTRACTORS
- 5.23.1 After submitting the required Subcontractor information to the Owner, the CMAR shall not contract with any other Subcontractor nor change Subcontractors without proper justification and without the prior written approval of the Owner.
- 5.23.2 If the Owner has a reasonable objection to any Subcontractor, and requests in writing a change in Subcontractors, the CMAR shall submit an acceptable substitute, and the Contract Sum may be increased or decreased by any reasonable costs directly caused by such substitution.
- 5.23.3 The CMAR will not be required to contract with any Subcontractor, person, or organization against whom he has a reasonable objection.

- 5.23.4 The CMAR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the 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:
- A. 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.
 - B. Require that the Subcontractor's work be performed in accordance with the CMAR's construction schedule to ensure completion within the Contract Time.
 - C. 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 the CMAR in the time and manner provided in the Contract Documents for like claims by the CMAR upon the Owner.
 - D. Require that all Subcontractors are in compliance with NRS 338.0117.
- 5.23.5 The CMAR shall pay each Subcontractor, within 10 calendar days after receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the CMAR on account of each Subcontractor's work. The CMAR shall also require that each Subcontractor make similar payments to each Sub-subcontractor.
- 5.23.6 The CMAR shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of the persons directly employed by him. If, through acts or neglect on the part of the CMAR, any Subcontractor suffers loss or damage, the CMAR agrees to settle with such Subcontractor. If such Subcontractor asserts any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR, who shall indemnify, hold harmless, and defend the Owner against any such claim.
- 5.23.7 If the CMAR fails to make appropriate payments to any Subcontractor, workman, or supplier, then the Owner may pay unpaid bills and/or withhold from the CMAR's unpaid compensation a sum of money deemed reasonably sufficient to reimburse the Owner or pay any and all such claims until satisfactory evidence is furnished that all such liabilities have been fully discharged by the CMAR, but in no event shall the provisions of this paragraph be construed to impose any obligations upon the Owner to the CMAR, his Surety, Subcontractors, workmen, or suppliers. In paying any unpaid bills of the CMAR, the Owner shall be deemed the agent of the CMAR, and any payment so made by the Owner, shall be considered as a payment made under the Contract by the Owner to the CMAR, and the Owner shall not be liable to the CMAR for any such payment made in good faith.
- 5.23.8 The CMAR shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under the Contract.
- 5.23.9 The Owner may upon request, furnish to any Subcontractor or supplier, information regarding payments to the CMAR on account of work done by such Subcontractor or supplier.
- 5.23.10 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor, workman, or supplier, except as may otherwise be required by law.
- 5.24 JOB SAFETY

- 5.24.1 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- 5.24.2 All work shall be performed in strict accordance with the most current edition of the State of Nevada Occupational Safety and Health Standards.
- 5.24.3 The CMAR shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:
- A. All employees on the Project and all other persons who may be affected thereby;
 - B. All of the Work, whether in storage on or off the site; and,
 - C. All property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.
- 5.24.4 The CMAR shall comply with all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss. The CMAR shall erect and maintain, as required by existing conditions and by the progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent properties.
- 5.24.5 The CMAR shall designate a responsible member of his organization at the site whose duty shall be supervision of a safety program and the prevention of accidents. This person shall be the CMAR's superintendent unless otherwise designated in writing by the CMAR to the Owner.
- 5.24.6 In any emergency affecting the safety of persons or property, the CMAR shall act, at his discretion, to prevent threatened damage, injury, or loss.
- 5.24.7 The CMAR shall be responsible for the safe operation of all equipment, for utilizing safe construction methods, and for any damage which may result from failure or from improper construction, maintenance, or operation.
- 5.24.8 The CMAR shall securely fence, barricade, cover, or otherwise adequately protect all excavations, holes, shafts, or other hazards to guard against danger to persons or animals and shall properly maintain such protection until the completion of the Project.
- 5.24.9 The CMAR shall immediately notify the Owner, and shall take immediate action to prevent damage, injury or loss, should any suspected hazardous materials be encountered during the course of work on the Project.
- 5.24.10 Prior to conducting any hot work (welding, brazing, soldering, cutting, grinding, etc.) in an existing building the Contractor shall complete and submit to the Owner a Hot Work Permit (utilizing the associated form as issued by Factory Mutual or Global Risk Consultants).
- 5.25 DRUG AND ALCOHOL POLICY
- 5.25.1 In order to be eligible to perform work on **OWNER** construction projects, all contractors who will work on such projects must have in existence a Drug and Alcohol policy. This requirement is a reasonable precaution to ensure a safe and drug-free environment on school construction projects as they may involve workers being in relatively close contact with students.

5.25.2 All contractors who perform work on **OWNER** projects, regardless of tier, shall have in place a Drug and Alcohol Policy applicable to all workers who will be employed on those projects. The Policy must meet the minimum requirements of the **OWNER**. Each contractor shall demonstrate compliance with this provision by submitting a certification under penalty of perjury that the Policy is in place, that it will be actively enforced, and that all workers who will be employed on **OWNER** projects will have undergone the pre-placement drug testing required by **OWNER**. The **OWNER** and/or the general contractor is empowered to review contractor records of enforcement of its Drug and Alcohol Policy at any time during the period following award of the contract up to and including completion of the project in order to determine whether the policy is in fact being enforced. The contractor shall forthwith deliver to the **OWNER** any and all records requested to determine compliance with this Drug and Alcohol Policy requirement. Failure to maintain or rigorously enforce the policy or to timely respond to **OWNER** demands for production of records relating to the Drug and Alcohol Policy may result in termination of the project contract at no cost to the **OWNER**.

5.26 QUALITY ASSURANCE/QUALITY CONTROL

5.26.1 The 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 the Owner and the Architect for review prior to submitting the first progress payment application.

5.27 SITE MANAGEMENT AND CLEANUP PROCEDURES

5.27.1 The CMAR shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The CMAR shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his operations.

5.27.2 The CMAR shall obtain any required dust control permit and shall implement a dust control program prior to beginning any activity at the project site. The CMAR's dust control program shall comply with all applicable state and local requirements. As a minimum, the CMAR shall periodically sprinkle the entire construction site with water as required to prevent blowing dust from becoming a hazard or nuisance to workmen, neighboring properties, or the public.

5.27.3 The CMAR shall develop and implement a stormwater pollution prevention plan complying with the most current version of the federal Environmental Protection Agency Construction General Permit, or with applicable state or local stormwater pollution prevention requirements, whichever is most stringent.

5.27.4 Upon completion of the Work the CMAR shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The CMAR shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition. The aforementioned cleanup requirements are also specifically applicable to all mechanical equipment and to all mechanical equipment rooms.

SECTION 6: THE ARCHITECT

6.1 ARCHITECT'S RESPONSIBILITIES

6.1.1 The Architect will provide construction administration services for the duration of the Project. The Architect is the Owner's representative and will advise and consult with the Owner for the duration of the Project.

- 6.1.2 The Architect will be the interpreter of the Drawings and Specifications and will render interpretations as may be necessary for proper execution of the Work.
- 6.1.3 The Architect will review and respond to all Requests for Information issued by the CMAR.
- 6.1.4 The Architect shall have complete access to the Work at all times during the Project.
- 6.1.5 The Architect will make periodic visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents.
- 6.1.6 The Architect will review all shop drawings, samples, and submittals required by the Contract Documents.
- 6.1.7 The Architect will not be responsible for the acts or omissions of the CMAR or any Subcontractor, or any of his or their agents or employees, or any other persons performing any of the Work.
- 6.1.8 Based upon site observations and the CMAR's progress payment applications, the Architect will review and make recommendations to the Owner, regarding the amounts claimed by the CMAR in each progress payment application.
- 6.1.9 The Architect will have authority to reject work which does not conform to the Contract Documents.
- 6.1.10 The Architect will prepare Change Orders and Construction Change Directives for review and approval by the Owner.
- 6.1.11 The Architect will have authority to order minor changes in the Work which do not involve a change in the Contract Sum or the Contract Time.
- 6.1.12 The Architect shall attend and conduct all scheduled construction progress meetings at the Project site.
- 6.1.13 The Architect's decisions on matters relating to aesthetics will be final if consistent with the intent expressed in the Contract Documents.

SECTION 7: PAYMENT

7.1 SCHEDULE OF VALUES

- 7.1.1 Within 14 calendar days after the issuance of the Notice to Proceed, the CMAR shall submit to the Owner and the 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 the Owner, and supported by such data to substantiate its correctness as the Owner may require. This schedule, when approved by the Owner and the 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 Section 7.2 (Payment Terms and Conditions).

7.2 PAYMENT TERMS AND DEFINITIONS

- 7.2.1 Cost of the Work (and related terms):
 - A. The Cost of the Work includes wages paid for labor in the direct employ of the 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.

- B. The Cost of the Work includes the 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.
- C. The Cost of the Work includes all payments made by the CMAR to the Subcontractors and suppliers for the cost of the Work performed under the Contract.
- D. The Cost of the Work includes the cost of bonding as stipulated in Section 8 herein (Insurance and Bonding).
- E. The Cost of the Work includes all allowable permits, fees, licenses, and tests.
- F. The Cost of the Work includes rental charges for all necessary machinery and equipment, exclusive of hand tools owned by workers, used for the Work, whether rented from the CMAR or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs at rates consistent with those prevailing in the area.
- G. Sales, use, gross receipts or other taxes, tariffs or duties related to the cost of the Work for which the CMAR is liable.

7.2.2 CMAR's General Conditions (and related terms):

- A. The CMAR's General Conditions includes; the superintendent, foreman, project management, scheduling, equipment and employee costs, general conditions, and shall be itemized as a lump sum amount and billed based upon the percentage complete of the entire Work.
- B. The CMAR's General Conditions includes 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 the CMAR's project manager, project engineer, project coordinator, and project estimator.
- C. The CMAR's General Conditions includes the cost of all 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 the CMAR's standard personnel policy, insofar as such costs are actually paid to employees of the CMAR who are engaged in the Work.
- D. The CMAR's General Conditions include reasonable transportation, travel, and hotel expenses for the CMAR's personnel incurred in connection with the Work.
- E. The CMAR's General Conditions include the cost (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.
- F. The CMAR's General Conditions include the cost of insurance as stipulated in Section 8 herein (Insurance and Bonding).
- G. The CMAR's General Conditions include sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the CMAR is liable.

- H. The CMAR's General Conditions include all costs associated with establishing, equipping, operating, maintaining, and demobilizing the specified field office(s).
- I. The CMAR's General Conditions include all 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 the CMAR's field office.
- J. The CMAR's General Conditions include all temporary water, power, and fuel costs necessary for the Work.
- K. The CMAR's General Conditions include all costs for removal of all generated non-hazardous substances, debris, and waste materials.
- L. The CMAR's General Conditions include costs incurred by the CMAR due to any emergency affecting the safety of persons and/or property.
- M. The CMAR's General Conditions include all costs directly incurred in the performance of the Work or in connection with the Project, and not included in the CMAR's Fee, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.
- N. The CMAR's General Conditions include all costs related to the CMAR's safety program.

7.2.3 CMAR's Fee (and related terms):

- A. The CMAR's Fee includes salaries and other mandatory or customary compensation of the 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 Cost of the Work).
- B. The CMAR's Fee includes general and administrative expenses of the CMAR's principal and branch offices other than the field office. Specifically excluded are materials and equipment utilized at the jobsite.
- C. The CMAR's Fee includes the CMAR's capital expenses, including interest on the CMAR's capital employed for the Work.
- D. The CMAR's Fee includes the CMAR's profit.

7.2.4 CMAR's Contingency (and related terms):

- A. Any portion of the CMAR's contingency that remains when the Work is completed shall be split between the Owner and the CMAR in accordance with the percentage values listed in the CMAR GMP Proposal.

7.2.5 Owner's Contingency (and related terms):

- A. The Owner's Contingency belongs to the Owner and any portion thereof that remains when the Work is completed belongs to the Owner.

7.3 PROGRESS PAYMENT APPLICATIONS

- 7.3.1 The CMAR shall submit a Progress Payment Application not more than once each month in the form required by the 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.
- 7.3.2 Each Progress Payment Application shall correctly set forth the value of all work satisfactorily performed to date, less 5% of that amount as a retained percentage. Once the Work is 50% complete, the Owner may, at his discretion, reduce the amount of retention. The 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.
- 7.3.3 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 the Owner in writing, such payment shall be conditioned upon submission by the CMAR of documentation, satisfactory to the Owner, as deemed necessary to protect the Owner's interest, including applicable insurance and transportation to the job-site. The risk of loss for such materials or equipment shall remain with the CMAR until final completion and acceptance of the Work.
- 7.3.4 The 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 the 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 the 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 the CMAR or such other person. This provision shall not be construed to relieve the CMAR of his 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 the Owner to require the fulfillment of all terms of the Contract Documents.
- 7.3.5 Upon receipt of each Progress Payment Application, and within a reasonable time, the Owner and the 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.
- 7.3.6 The Owner or the Architect 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 the Owner from loss based on any of the following grounds. When the grounds are removed, payment shall be approved for the associated amount withheld.
- A. Defective work not remedied.
 - B. Claims filed or reasonable evidence indicating the probable filing of claims.
 - C. Failure of the CMAR to make proper payments to Subcontractors or Suppliers.
 - D. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum.
 - E. Damage to a separate contractor.
 - F. Reasonable indication that the Work will not be completed within the Contract Time.

- G. Unsatisfactory execution of the Work by the CMAR.
- H. Failure to maintain any insurance required by the Contract Documents.
- I. Any other breach of the Contract Documents.

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

7.3.8 No payment by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents, nor shall it relieve the 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.

7.4 FINAL PAYMENT

7.4.1 When the Owner has received satisfactory evidence that all claims and obligations of the CMAR have been paid, discharged, or waived, the Owner will make final payment to the CMAR of all monies retained on all properly completed and accepted work.

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

- A. Unsettled claims.
- B. Guarantee or Warranty issues.
- C. Faulty or defective work.
- D. Failure of the Work to comply with the requirements of the Contract Documents.
- E. Latent defects in the Work.
- F. Violations of laws, rules or regulation.
- G. Indemnification claims.

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

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

7.4.4 As a condition of requesting or receiving final payment, the 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.

7.5 INTEREST PAYMENTS

- 7.5.1 Interest will be paid to the CMAR for monies that are retained on satisfactorily completed work, in accordance with Nevada Revised Statutes Section 338.515.

SECTION 8: INSURANCE AND BONDING

8.1 GENERAL REQUIREMENTS

- 8.1.1 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at his sole expense, procure, maintain, and keep in force not less than the following amounts, types and coverages of insurance conforming to the minimum requirements set forth in this Section, or the Owner-CMAR Construction Agreement, unless otherwise agreed to by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. If the CMAR fails to comply with this Section, the CMAR shall be considered in default of the Contract if so determined by the Owner.
- 8.1.2 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at the CMAR's sole expense, cause each Subcontractor and each Sub-subcontractor involved with the work of construction under the direction and control of the CMAR for this contract, to procure, maintain and keep continuously in force insurance types and limits to conform to the minimum requirements set forth in this section, unless otherwise agreed to beforehand by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. The required limits of General Liability insurance for Subcontractors shall be a minimum of \$2,000,000 or the amount customarily carried by the Subcontractor, whichever is greater, per occurrence for bodily injury, personal injury and property damage. If the CMAR fails to comply with this Section, the CMAR shall be considered to be in default of the Contract if so determined by the Owner.
- 8.1.3 Unless specified herein or otherwise agreed to by the Owner, the required insurance shall be in effect prior to the commencement of work by the CMAR and shall continue in force until the latter of the following three conditions:
- A. Final acceptance by the Owner of the completed Work and acceptance of final payment by the CMAR.
 - B. At such time that the insurance is no longer required by the Owner under the terms of the Contract Documents.
 - C. The expiration of any applicable law (including any Statute of Repose), by which any party may bring a claim against Owner.
- 8.1.4 As evidence of compliance with the insurance required by Section 8 (Insurance and Bonding), the CMAR shall furnish the Owner with all certificates of insurance (ACORD form 25-S or equivalent form approved by the Owner) prior to the award of the contract. The CMAR shall maintain original copies of Subcontractor insurance certificates for the duration of the Project and through the warranty period. Such records shall be furnished to the Owner upon request. The certificates for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on the insurer's behalf. All certificates along with the required endorsements shall be received and approved by the Owner before any work commences. The Owner's project number, project location and project description shall be noted on each certificate of insurance.
- 8.1.5 The Owner reserves the right to require and obtain complete, certified copies of any insurance policies required by the Contract Documents at any time. Complete copies of policies shall be furnished by the

CMAR and by any Subcontractor or Sub-subcontractor within sixty (60) days after a written request is issued by the Owner. In lieu of a required certificate of insurance the CMAR may furnish an original binder signed by an authorized representative of the insurer(s) for a maximum of 60 days from the date of inception of the associated policy(ies). Said certificates of insurance or original binder must include the Additional Insured Endorsement as required in Section 8.3.4.

- 8.1.6 With respect only to the bonds required by Section 8.7 (Performance and Payment Bonds), the CMAR shall furnish the Owner with properly executed bonds on forms acceptable to the Owner and shall have affixed to each bond a certified copy of a current power of attorney of the attorney-in-fact who executed the bond on behalf of the surety.
- 8.1.7 All insurance policies provided by CMAR shall provide by endorsement that there will be no cancellation, reduction or modification of coverage without 45 days prior written notice to the Owner. The required insurance shall be subject to the approval of the Owner and all endorsement and forms shall be acceptable by the Owner. If an insurance policy renews, lapses, or cancels during the period of this Agreement or any extension thereof, CMAR shall furnish Owner with evidence of placing a renewal or replacement policy prior to the effective expiration or cancellation date. Full copies of policies shall be furnished by CMAR, its subcontractors and other contracting partners within thirty (30) days after written request from Owner
- 8.1.8 CMAR's Insurers or sureties shall have and maintain throughout the period for which coverage is required, an A.M. Best Company Rating of "A-" or better and an A.M. Best Company Financial Size Category of "X" or better, unless specifically waived by the Owner.
- 8.1.9 Insurers or sureties providing the insurance or providing the bonds required by this Contract must be either:
- A. Authorized by certificates of authority issued by the Department of Insurance of the State of Nevada; or
 - B. With respect only to the coverage required by Section 8.2 (Workers Compensation); be authorized as a self-insurer under Nevada Revised Statutes Section 616.291.
- 8.1.10 The insurance provided by the CMAR and his Subcontractors pursuant to this Contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Owner or an Owner's official, officer, agent or employee shall be in excess of and not contributing to the insurance provided by or on behalf of the CMAR. Coverage maintained by the CMAR or his Subcontractors shall apply first, before any other insurance, on a primary basis, and without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Owner in writing. Such approval shall not relieve the CMAR from payment of any deductible or self-insured retention.
- 8.1.11 The Owner and the Architect shall be named as additional insured on all insurance provided by the CMAR as required in Section 8.3.4 (except for workers compensation insurance). The Workers Compensation policy shall provide a Waiver of Subrogation Endorsement as required in Section 8.2.1.
- 8.1.12 Failure to maintain the required insurance or surety requirements may result in termination of this contract at Owner's option. If CMAR or its Subcontractors fails to maintain insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance or bond at CMAR's and/or Subcontractor's expense.

8.1.13 By requiring insurance herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Owner and such coverage and limits shall not be deemed as a limitation on CMAR's or Subcontractor's liability under the indemnities granted to Owner in this contract.

8.2 WORKERS COMPENSATION

8.2.1 The CMAR's Workers Compensation insurance shall comply with all statutory requirements of the State of Nevada. The CMAR's insurance or authorized self-insurance shall cover the CMAR, and to the extent not otherwise insured, his Subcontractors of every tier for those sources of liability which would be covered by the standard Workers Compensation Policy as prescribed in Nevada Revised Statutes Chapter 616 and Employers Liability coverage without restrictive endorsements. Each policy shall contain a waiver of subrogation against the Owner. In addition, where appropriate, coverage shall be included for any other applicable federal or state law, including but not limited to, the Longshore and Harbor Workers Compensation Act, Maritime including Jones Act, and Federal Employers Liability Act.

8.2.2 Subject to the restrictions of coverage found in the Nevada Industrial Insurance Act (Nevada Revised Statutes Chapter 616), there shall be no maximum limit on the amount of coverage for liability imposed by this Act, the Longshore and Harbor Workers Compensation Act, or any other coverage customarily insured under Part One of a standard Workers Compensation Policy. The minimum amount of coverage for those coverages insured under Part Two of the Standard Workers Compensation Policy (inclusive of any amounts provided by an umbrella or excess policy) shall be those amounts stated under Subsection 8.7 (Required Limits of Insurance). If self-insured, such insurance must be approved by Owner.

8.3 COMMERCIAL GENERAL LIABILITY

8.3.1 The CMAR shall carry and maintain a Commercial General Liability Policy and, if necessary, Commercial Umbrella insurance, provided on a form at least as broad as the Insurance Services Office (ISO) CG 0001 12 04 occurrence form (CMAR's policy is the CG 00 01 12 07 or CG 00 01 04 13 version) and shall cover all operations, activities and exposures of the CMAR including, but not limited to, the following:

8.3.1.1 Premises and Operations Liability.

8.3.1.2 Products and Completed Operations Liability.

8.3.1.3 Personal and Advertising Injury.

8.3.1.4 Contractual Liability insuring the obligations assumed by the CMAR in this Agreement.

8.3.1.5 Liability which the CMAR may incur as a result of the operations, acts, or omissions of his subcontractors, independent contractors, suppliers, their agents or employees.

8.3.1.6 Not used.

8.3.1.7 "Claims Made" or "Modified Occurrence" coverage forms may not be used and are not acceptable (except for professional liability insurance).

8.3.1.8 Defense costs and expenses shall not reduce the limits of insurance and shall not apply within any aggregate limit of insurance unless approved by the Owner.

- 8.3.1.9 Not used.
- 8.3.2 The CMAR shall maintain per project coverage with separate limits of coverage applicable only to the work performed under the Contract. The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachment of ISO endorsement Amendment of Limits of Insurance (Designated Project or Premises) -to a Commercial General Liability Policy with the minimum amounts stated under Section 8.8 (Required Limits of Insurance).
- 8.3.3 The CMAR shall continue to maintain the required Commercial General Liability coverage along with Products/Completed Operations coverage, without restrictive endorsements unless approved by the Owner prior to the bid, for three years or any applicable law after the date that the (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 8.8 (Required Limits of Insurance).
- 8.3.4 Additional Insured status and coverage to Owner, Owner’s officials, officers, and employees shall be included in accordance with an endorsement attached to the policy and under the commercial umbrella, if any, providing coverage at least as broad as the combination of forms which include the unmodified ISO CG 20 10 07 04 and the 20 37 10 01 endorsements.
- 8.3.4.1 The endorsement shall name and list Owner, Owner’s officials, officers, and employees as additional insureds under the CGL and shall apply until the applicable state statute of repose has expired for potential defective workmanship.
- 8.3.4.2 This additional insured coverage shall apply on a primary basis and be “non-contributory” with respect to any other valid and applicable insurance, self-insurance or deductible afforded to Owner.
- 8.4 BUSINESS AUTO LIABILITY INSURANCE
- 8.4.1 The CMAR's insurance shall cover the CMAR liability arising out of any auto and be written on any of the Unmodified forms at least as broad as the (ISO CA 0001, CA 00 055, CA 00 12, CA 00 20). The form shall include coverage for owned, non-owned, and hired autos used by the subcontractor, its employees, agents or representatives. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- 8.4.2 The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 8.8 (Required Limits of Insurance).
- 8.5 PROPERTY INSURANCE
- 8.5.1 Not used.
- 8.5.1.1 Not used.
- 8.5.1.2 Not used.
- 8.5.1.3 There shall be no exclusion in the Builders Risk policy for any resultant damage caused by or resulting from workmanship, construction, materials, specifications or design defect.

- 8.5.1.4 If the Contract includes both construction of or additions to buildings or structures and the installation of machinery or equipment, Builders Risk insurance shall include coverage during transit, interim off-site storage and during post-installation testing. If the Contract is solely for the purpose of installation of machinery or equipment in existing buildings or structures, the CMAR shall provide an all risk Installation Floater including coverage during transit, interim off-site storage and during post-installation testing.
- 8.5.2 For Builders Risk the amount of insurance is to be 100% replacement cost plus an additional 15% for debris removal of the completed value including foundations of the entire addition(s), building(s) or structure(s). In the event that such Builders Risk coverage includes debris removal in excess of the policy limit, the limit shall not require the additional amount for debris removal. In the case of a remodel or renovation project, the policy limit shall be the greater of the project amount or \$500,000. The extra expense sublimit shall be the greater of twenty (20) percent of the policy limit or \$1,000,000.
- 8.5.3 The amount of insurance for an Installation Floater shall be 100% of the installed replacement cost value, and valuation shall be replacement cost.
- 8.5.4 The Builders Risk Policy or the Installation Floater must not be subject to any limitation or exclusion of coverage because of occupancy of the building(s), addition(s) or structure(s) in the course of construction or the putting to use of the machinery or equipment. The policy must be endorsed to provide that, subject to the notice of cancellation requirement, coverage will continue to apply until the Certificate of Substantial Completion is issued by the Owner for the building(s), building addition(s) or structure(s), or the machinery or equipment.
- 8.5.5 Not used.
- 8.5.6 The Owner reserves the right to require the CMAR to provide other forms of property insurance if so determined by the Owner.
- 8.5.7 Any policy or policies shall name the Owner as Sole Loss Payee. The CMAR shall comply with all warranties required by the insurer. Any deductible shall be the responsibility of the CMAR.
- 8.6 PROFESSIONAL LIABILITY INSURANCE
- 8.6.1 Provided as per 8.8.5 below.
- 8.7 PERFORMANCE AND PAYMENT BONDS
- 8.7.1 Performance and Payment Bonds are required for all contracts in excess of \$100,000 (per Nevada Revised Statutes Section 339.025). Upon notification to the bidder of the acceptance of the bid, the successful bidder shall immediately cause to be executed all required Performance and Payment Bonds (including those required for Subcontractors) in a form acceptable to the Owner for 100% of the Contract Sum. The Performance and Payment Bonds shall be furnished no later than 3 calendar days after the Contract is awarded.
- 8.7.2 Not used.
- 8.7.3 The Owner reserves the right to require the CMAR to obtain Performance and Payment Bonds for any Subcontractor, each in the amount of 100% of the Subcontractor's bid. The Owner will pay the actual cost of any bond so required, not including any overhead and profit. If said bonds cannot be obtained within 60 calendar days of notification, the Subcontractor shall be replaced at no additional cost to the Owner.

8.7.4 The Owner will not require the CMAR to increase the Performance and Payment Bonds to accommodate Change Orders. The Owner will not pay additional costs for increased bond fees resulting from Change Orders.

8.8 REQUIRED LIMITS OF INSURANCE

8.8.1 The minimum amounts of insurance (inclusive of any amounts provided by an umbrella or excess policy) shall be as follows:

8.8.2 Commercial General Liability

Minimum limits for all contract amounts are to be applicable only to work performed under this Contract and shall be those that would be provided with the attachment of the Amendment of Limits (Designated Project or Premises) endorsement.

General Liability: \$2,000,000 per occurrence and \$4,000,000 in both the General Aggregate and Products/Completed Operations Aggregate or the amount customarily carried by CMAR, whichever is greater, combined single limit per occurrence for bodily injury, personal injury and property damage. The General Aggregate must be on a Per Project basis. General Liability coverage shall specifically apply to the acts and/or omissions of CMAR and its subcontractors. Moreover, the above General Liability coverage shall be maintained in full force and effect for two (2) years from the date of completion of the project, and shall solely apply to this project.

General Aggregate	<u>\$2,000,000</u>
Products/Completed Operations Aggregate	<u>\$2,000,000</u>
Personal and Advertising Injury	<u>\$1,000,000</u>
Each Occurrence	<u>\$1,000,000</u>

8.8.3 Workers Compensation/Employers Liability

State Industrial and Occupational Disease Insurance. Obtain 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. Employers Liability must be maintained for a minimum of \$1,000,000 in limits. If an excess policy is utilized, the policy will provide excess coverage for Employers' Liability.

8.8.4 Commercial Automobile Liability

Automobile Liability: \$2,000,000 minimum or the amount customarily carried by the CMAR, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limits may apply. Non-owned and hired automobile liability must be included.

8.8.5 Professional Liability: \$1,000,000 per claim.

8.9 EMPLOYEMENT RELATED INSURANCE

8.9.1 Employment related practices.