

Solicitation No: RFQ #2025-02
Description: CMAR for Instructional Learning Spaces Updates and Configurations

Amendment No.: One (1)

Offeror shall acknowledge receipt of this amendment by signing in the appropriate space on the Acknowledgement of Amendment Form of the original solicitation document. **Failure to acknowledge the amendment shall deem a proposal as non-responsive.**

The pages 2 - 22 contain information that was covered at the Pre-Proposal Conference held on March 19, 2025.

Pages 23 – 90 are the proposed Construction Services Contract Template

This amendment is hereby executed this date by the District.

Frances Staron

April 3, 2025

Signature

Date

Frances Staron
Accounting Technician – Purchasing

RFQ Due Date/Time

April 10, 2025
2:00pm LOCAL

Osborn School District No. 8
1226 W. Osborn Road
Phoenix, AZ 85013

- Don't wait until the last minute to drop off your response.

CMAR Procurement Process Review

- At the RFQ Opening – Only the names of the responding vendors are read.
- A preliminary review will be performed to verify that all submittals are “Responsive” and “Responsible”
 - RFQ Offer and Acceptance was signed.
 - All required forms were submitted.
 - All Amendments were acknowledged.
- If any of the above are missing, it could deem the submittal as “Non-Responsive” or “Non-Responsible”.
- An Evaluation Team (consisting of an Architect, a Contractor, and 5 District representatives) will score and rank each of the submittals. Based upon individual evaluation committee member ranking, the Offeror final ranking list will be established.
- Two Options:
 - The District can start negotiations with the #1 ranked firm.
 - The District can hold presentations with the top 3 to 5 ranked firms.
 - If presentations are held, evaluation criteria and point values will be provided to Offerors prior to the presentation.
 - The evaluation committee will score/rank the presentations provided by the Offerors.
 - The final ranking list shall be based on just the presentation.
- District will begin negotiations with the #1 ranked offeror for a Pre-Construction contract.
 - If a contract can be negotiated, an award recommendation is made to the Governing Board.
 - If a contract cannot be negotiated, the District will cease negotiations with the #1 ranked firm and begin negotiations with the #2 ranked firm. Once negotiations cease, the District cannot recommence negotiations.

Lobbying by Offerors

Offerors are hereby advised that lobbying is not permitted with any District personnel or Board Members related to or involved with this solicitation until the Administration's recommendation for award has been approved by the Governing Board. All inquiries must be directed through the Solicitation Contact.

Lobby is defined as *“any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and all other groups who seek to influence the Governmental Decision of a Board Member or ANY District Personnel after release and prior to the award of this contract by all entities.”* Any Offeror or any individuals that lobby on behalf of the Offeror during the time specified will result in the rejection and disqualification of said proposal.

Questions Asked and Addressed

- Q1. Will the work at the schools take place concurrently or consecutively? We're trying to determine if we'll need to assign five superintendents (one per school), or if we can plan for a single superintendent to complete one site before moving on to the next.
- A1. RFQ #2025-02 is for a Construction Manager At Risk project which means that the design scope of work is yet to be completed. At this time the District does not have a determination as to whether the work at the campuses will take place concurrently or consecutively. This will be a decision that is made during the pre-construction phase after the CMAR is awarded.

RFQ #2025-02
CMAR for the Osborn School District #8
Instructional Learning Spaces Updates and Configurations
Pre-Solicitation Conference (Non-Mandatory)
March 19, 2025 @ 2:30 PM



Introductions

Osborn School District No. 8

Dr. Michael Robert

Superintendent



Frances Staron

Accounting Technician
- Purchasing



Colleen McCabe

Chief Operations Officer



Introductions Support Team

Elizabeth Thielen

Sr. Project Manager
The H2 Group



Don Brubaker

Architect
SPS+ Architects



Lila McCleery

Procurement Consultant
Sunny Path Associates



Purpose

The purpose of this Pre-Solicitation conference is to clarify the contents of the solicitation in order to prevent any misunderstanding of Osborn School District's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the District in writing. The district will then determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. **Oral statements or instructions shall not constitute an amendment to the solicitation.** Offerors(s) may ask questions, but statements made during this conference are not amendments to the Solicitation.

Purpose

Project Overview

- Reconfiguration of school spaces at the following schools:
 - Clarendon Elementary School
 - Encanto Elementary School
 - Longview Elementary School
 - Solano Elementary School
 - Osborn Middle School
- K-8 students (occupied campuses)
- Scope renovations include general education classrooms and special education classrooms, indoor and outdoor instructional areas at all school locations. Osborn Middle School will also include renovations to band/music rooms, art room, shop space, and restrooms
- Schedule: Governing Board approval in May, 2025
- Construction: Anticipated to start in late 2025 or early 2026.
- **The funding for this project shall be split between multiple bond sales. The construction of this project is based on the successful sale of bonds by Osborn School District and approval of the District Governing Board.**

2026-27

Contract Term
(Work Performed)

**H2 Group &
SPS+ Architects**

Owner's
Representative and
Design Firm
managing project

Funding

District's 2023 Bond
Program

Approximate budget
\$8 – 9.9 Million

Important Reminders

All formal solicitation opportunities for Osborn School District are posted on the website,
<https://www.osbornnet.org/Page/204>

This includes all files, attachments, and Amendments. It is the vendor's responsibility to acknowledge any/all Amendments.

No Right to Rely on Verbal or Electronic Mail Response

Uniform Instructions to Offerors (2)(E)

A Bidder shall not rely on verbal or electronic mail reply to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.

Questions should be addressed during the Pre-Submittal conference and followed up in writing to the District. Approaching staff after the conference may give the perception of providing additional information that was not available to everyone. Therefore, once the Pre-Submittal conference has concluded, please do not approach any of the staff present today. Submit all questions in writing as outlined in the Uniform Instructions to Offerors.

Lobbying

Offerors are hereby advised that lobbying is not permitted with any District personnel or Board Members related to or involved with this solicitation until the Administration's recommendation for award has been approved by the Governing Board. All inquiries must be directed through the Solicitation Contact.

Lobby is defined as “any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and all other groups who seek to influence the Governmental Decision of a Board Member or ANY District Personnel after release and prior to the award of this contract by all entities.” Any Offeror or any individuals that lobby on behalf of the Offeror during the time specified will result in the rejection and disqualification of said proposal.

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DOCUMENTS REFERENCED

The documents referenced within this solicitation are available at the following websites:

Arizona Revised Statutes (A.R.S.)

www.azleg.state.az.us/ArizonaRevisedStatutes.asp

Arizona School District Procurement Rules in the Arizona Administrative Code

https://apps.azsos.gov/public_services/Title_07/7-02.pdf

I.R.S W-9 Form (Request for Taxpayer I.D. Number)

www.irs.gov/pub/irs-pdf/fw9.pdf

Solicitation: Request for Qualifications

The anticipated cost for this project exceeds the \$100K threshold that requires a formal, competitive sealed solicitation, as outlined in the School District Procurement Rules and related statutes.



Table of Contents
Attachments are in bold



Sealed SOQ Package
Follow instructions



Attachments
Completed thoroughly



Submittal Requirements
Check and recheck

NOTE: Each firm shall submit **ONE (1) ORIGINAL, SEVEN (7) COPIES, AND ONE (1) DIGITAL COPY (USB Drive – DO NOT PASSWORD PROTECT) OF THE INFORMATION REQUESTED IN THIS SECTION. THE DIGITAL COPY MUST INCLUDE SCANNED SIGNATURES.** All submittals shall be bound together, and each section tabbed according to the following format:

The Construction Manager at Risk (CMAR) Team will be selected through a qualifications-based selection process. Firms interested in providing CMAR services shall submit a Statement of Qualifications (SOQ) that addresses the following items:

Tab 1. Basic Company Information

- A. Company name.
- B. Address.
- C. Telephone number.
- D. Email address.
- E. Name of primary contact person.
- F. Number of years in business (under the submitted name) and number of years operating within the Phoenix metro area.
- G. Arizona licenses(s) held by the firm.
- H. If the firm has more than one office, provide specific information about the parent company and administering branch office.
- I. Indicate the type of ownership (corporation, joint venture, Limited Liability Company, sole proprietorship, etc.).

Tab 2. Key Personnel

- A. Identify and present the project team(s) consisting of all key personnel who will be specifically assigned to this project from pre-construction phase through project warranty phase (general management, project management, estimator, construction superintendent, marketing coordinator, etc.). Number of years employment with submitting firm shall be noted for each member.
- B. Detailed information regarding each key personnel's education and experience shall be clearly identified. Specific experience with performing CMAR projects shall be identified for each member. Resumes shall be provided for all assigned personnel. (Caution: The District fully expects the successful firm to follow through with the same personnel identified through this process. Any change to this assignment shall be approved by the District).
- C. Provide an organizational chart of the team(s) selected for the appropriate project scopes.

Tab 3. Experience of Firm

- A. Identify five most recent representative examples of similar work along with contact information for each. Information shall include:
 1. Description of project.
 2. Location.
 3. Architect firm and contact information.
 4. Identification of key contact and phone number.
 5. Construction services performed (brief).
 6. When GMP was established (90%, etc.).
 7. Original GMP.
 8. Final contract amount.
 9. Total number of change orders.
 10. Original substantial completion date and actual substantial completion date achieved for project.
 11. Type of alternative project delivery method used.

Submittal Requirements

Review to ensure all required information and attachments are included as outlined. SOQs should be organized as follows for evaluation purposes.

01 Basic Information

02 Key Personnel

03 Experience of Firm

- B. Provide a statement of firm's history for submitting claims. Provide specific information, i.e., type of claim, date, reason, amount, and outcome, indicating the total number of claims filed during the past five years.
- C. Provide detail regarding any liquidated damages ever accessed by an owner for late completion of a project within the past five years.
- D. When responding to the project experience section of this RFQ (3-A above), firms shall include representative projects that support the chosen project.

Tab 4. Organizational Strength

- A. Provide audited financial statements representing the past two years. Provide Balance Sheets and the Statement of Income and retained earnings.
- B. Provide a letter from your bonding company indicating the ability to bond this project, the firm's maximum cumulative bonding limit, and your current bonding available capacity.
- C. Provide a certificate of insurance indicating your firm's insurance coverage. A sample certificate may be provided. However, before any work is initiated, the successful contractor must provide a certificate that names Osborn School District No. 8 as additional insured.
- D. Provide a letter from your firm's insurance company stating the Workers' Compensation Experience Modification Rate (EMR) for the past three (3) years. The letter shall be on the insurance company's letterhead and shall be signed by an appropriate individual employed by the insurance company.
- E. Identify the current total dollar value of awarded construction work currently being managed by the local office. Identify the total number of direct employees of local office supporting construction value noted above. Identify your firm's current available bonding capacity.
- F. Identify any judgments or liens against your firm within the past three years.
- G. Identify any current unresolved bond claims against the offeror.
- H. Identify any deficiency orders issued against the prime contractor by the Arizona Register of Contractors over the past three years.
- I. Identify any filing under the U.S. Bankruptcy Code over the past three years.

Tab 5. Method Of Approach

- A. Describe the firm's overall approach to this project including any difficulties the firm perceives.
- B. Describe the various pre-construction services offered for this project.
- C. Describe firm's approach and philosophy working at an active site with students and staff.
- D. The process of establishing the GMP shall be presented along with the recommended point of setting this price.
 - 1. At what stage of design do you feel comfortable doing a first phase GMP, and how will you balance that with a rough order of cost for the entire project?
- E. The approach firm takes in performing the project once the GMP is set to include the following:
 - 1. Schedule adherence.
 - 2. Execution.
 - 3. Inspection.
 - 4. Quality assurance.
 - 5. Safety culture.
 - 6. Change orders.
 - 7. Overall management and approach to cost savings.
- F. Describe your process for vetting subcontractors and suppliers that will be able to perform within critical timeframes given the current market.
- G. Describe firm's philosophy on self-performing any of the trade work along with a percentage of project that will be self-performed, if any.

Submittal Requirements continued

Review to ensure all required information and attachments are included as outlined. SOGs should be organized as follows for evaluation purposes.

04 Organizational Strength

05 Method of Approach

- H. What are the long lead items that will affect overall schedule from a procurement standpoint and how will you mitigate that risk?
- I. How can you help the owner and architect budget for disparate phases and completing program priorities?

Tab 6. Miscellaneous

- A. Firm shall provide a summary statement on why they would be the best fit for the Osborn School District No. 8 to perform the CMAR project.
- B. Provide any additional information that would add value to the program offered that has not been identified above.

Tab 7. Attachments/Standard Forms

- Attachment 1: Offer and Acceptance Form
- Attachment 2: Exceptions/Deviation Form
- Attachment 3: Confidentiality/Proprietary Information Form
- Attachment 4: Additional Materials Form
- Attachment 5: Non-Collusion and No Gifts/Gratuity Affidavit
- Attachment 6: I.R.S. W-9 Form
- Amendment Acknowledgement Form

Submittal Requirements continued

Review to ensure all required information and attachments are included as outlined. SOQs should be organized as follows for evaluation purposes.

06 Miscellaneous

07 Attachments/Standard Forms



Read, complete and sign all attachments. Note that Attachment 5 no longer needs to be notarized.



Verify if any Amendments have been issued. If so, acknowledge, sign and include.

IMPORTANT

Solicitation No: RFQ #0025-02
Description: CMAR - Instructional Learning Spaces Updates and Configurations

Due no later than 2:00pm MST on April 10, 2025

FROM:

Name of Firm

Address

City, State, Zip

Phone



Osborn School District
Attn: Frances Staron
Accounting Technician – Purchasing
1226 W. Osborn Road
Phoenix, AZ 85013

Submission Instructions

- 01 Prepare SOQ submission materials as indicated in the RFQ. Another set of eyes help to review and ensure all information, forms and signatures are included.
- 02 Submit inquiries in writing before the deadline, if applicable.
- 03 Send or deliver your sealed SOQ package to Osborn School District on or before the deadline. ***Note the number of copies plus digital version needed.***
- 04 Late submittals shall not be considered.

Important Dates

*Questions are due
No later than 7 days prior to
the due date.*

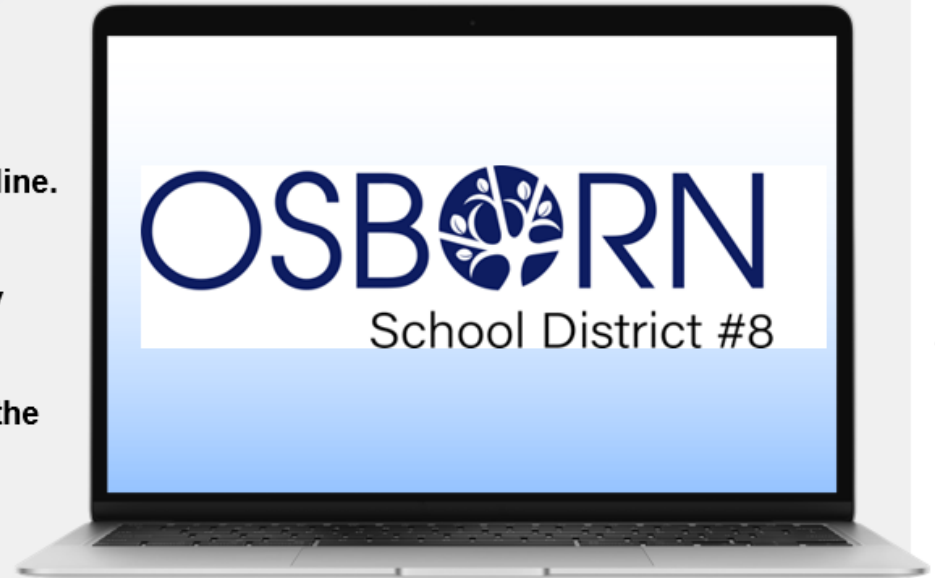
***SOQs are due no later
than 2:00 PM on
April 10, 2025.***

Late SOQs shall not be considered.

Contract award tentatively
anticipated at the May meeting
by the Osborn School District
Governing Board.

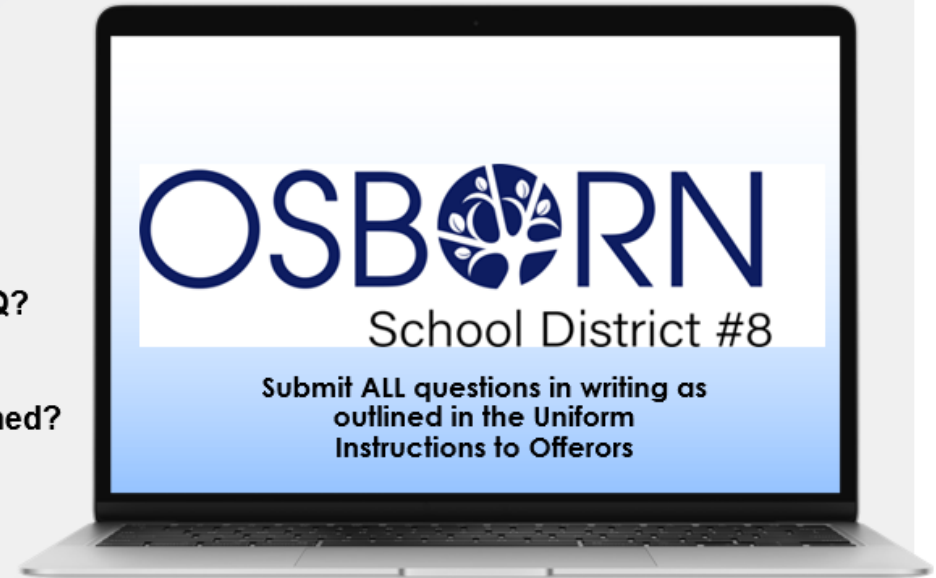
Successful SOQ Development

- 1 Read the RFQ and all related information.
- 2 Submit all questions in writing prior to the deadline.
- 3 Attachments – be sure to review for consistency and complete accurately.
- 4 Submit within in a sealed package on or before the deadline to the District Office.



Frequently Asked Questions

- 1 How do I get a contract?
- 2 What happens after I submit our SOQ?
- 3 What if we realize we made a mistake in our SOQ?
- 4 Who can I talk to about this once SOQs are opened?
- 5 When can we change our pricing?
*****Trick question!***



Responsive & Responsible

Responsive & Responsible

- ✓ Requirements followed
- ✓ Attachments completed and signed.
- ✓ No suspension, debarment or pending litigation
- ✓ No conflicts of interest
- ✓ Properly licensed to do business in AZ

Non-Responsive or Not responsible

- Non-collusion affidavit issues ✗
- Incomplete response ✗
- Unsigned Offer & Acceptance (Attachment 1) ✗
- ROC, AZ Corp Comm related concerns ✗
- Financial distress or litigation ✗



Site Walk

Osborn Middle School

Offerors are encouraged to take photos while onsite.

It is important to note that this is an occupied campus, and you must take **extreme caution** to make sure that **students are not included** due to FERPA.

Schedule of Site Walks (if desired by attendees)

- Solano Elementary (PreK – 6)
- Longview Elementary (PreK – 6)
- Clarendon Elementary (4 – 6)
- Encanto Elementary (PreK – 3)

Thank you!



Solicitation No: RFQ #2025-02

Description: CMAR for Instructional Learning Spaces Updates and Configurations

Please write legibly.

PRINTED NAME	ORGANIZATION	PHONE #	EMAIL ADDRESS
Kodi Dewitt	Sun Valley Builders	480-710-6193	Kodi@sunvalleybuilders.com
Brian Hamm	CORE	480-404-5550	BrianHamm@CoreConstruction.com
John Dowd	CORE	480-278-4665	
VICENTE TERRON	CHASE	520-861-2918	VTERRON@CHASE.US
KATE GUNTHER	CHASE	602-501-5403	kgunther@chasse.us
Sean Murphy	RYTAN Construction	480-414-0906	smurphy@rytanconstruction.com
Shane Hakh	Low Mountain	602-432-6164	shatch@lowmountain.com
Beau Kitson	RYTAN Construction	602-326-1578	BKitson@RYTANconstruction.com
Roman Almusawi	CORE	313-420-7874	RomanAlmusawi@CoreConstruction.com
EUGENE THIEN	H2 GROUP	602-527-1663	thien@h2group.net
Frances Staron	Osborn School District	602-707-2023	fstaron@osbornsd.org
PAUL HARTLEY	THE H2 GROUP, LLC	602-885-1423	paul.hartley@h2group.net
Missy Mundy	Sunny Path Assoc	480-842-9088	missy@sunnypath.us
Michael Robert	Osborn School District	602-391-0939	mrobert@osbornsd.org

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

Date Issued: **ENTER DATE**

School District Project No.: **ENTER PROJECT NUMBER**

School District Project Name: **Instructional Learning Spaces Updates and Configurations**

OWNER

OSBORN SCHOOL DISTRICT GOVERNING BOARD

for and on behalf of

**OSBORN SCHOOL DISTRICT #8
1226 W. Osborn Road
Phoenix, Arizona 85013**

CMAR

CMAR NAME

CMAR ADDRESS

Xxxxxxx, Arizona XXXXX

CONSTRUCTION SERVICES AGREEMENT

**STANDARD FORM OF
AGREEMENT BETWEEN OWNER
AND CMAR**

Agreement made this the XXth day of (Month) in the year Two Thousand Twenty-Five, by and between **OWNER:** OSBORN SCHOOL DISTRICT #8, located at 1226 W. Osborn Road, Phoenix, AZ 85013 and **CMAR:** (CMAR NAME), located at (CMAR Address), XXXXXXX, AZ XXXXX for services in connection with the following **PROJECT**:

Project Description:

This project entails the reconfiguration of school spaces at all Osborn School District #8 schools, except Montecito Community School. Spaces to be reconfigured, renovated, or expanded include General Education classrooms and Special Education classrooms through the schools, as well as instructional areas indoor and outdoor. Osborn Middle School will include the Band/Music rooms, Art room, Shop space, and restrooms.

Construction will take place at Clarendon Elementary School (Grades 4th to 6th), Encanto Elementary School (Grades Pre-K to 3rd), Longview Elementary School (Grades Pre-K to 6th), Solano Elementary School (Grades Pre-K to 6th), and Osborn Middle School (Grades 7th to 8th).

School Addresses:

- Clarendon Elementary School – 1225 W. Clarendon Avenue, Phoenix, AZ
- Encanto Elementary School – 1420 W. Osborn Road, Phoenix, AZ
- Longview Elementary School – 1209 E. Indian School Road, Phoenix, AZ
- Solano Elementary School – 1526 W. Missouri Avenue, Phoenix, AZ
- Osborn Middle School – 1102 W. Highland Avenue, Phoenix, AZ

In consideration of the mutual covenants and obligations contained herein, **Owner** and **CMAR** agree as set forth herein.

ARTICLE 1

Scope of Work

- 1.1 CMAR shall perform all construction services and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work described in and reasonably inferable from the Contract Documents. "Work" will have the meaning specified in the General Conditions. This Agreement (defined in the General Conditions) covers services by the CMAR for the construction phase, commissioning phase, and the warranty period phase. CMAR shall perform all Work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Agreement, and with the greatest economy, efficiency, and expediency consistent herewith all as more particularly described in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 2

Contract Documents

- 2.1 The Contract Documents (defined in the General Conditions) are comprised of the following in order of precedence and are incorporated herein by reference:
- 2.1.1 This Standard Form of Agreement Between Owner and the Construction Manager at Risk, the General Conditions for Construction, and written modifications executed by Owner and CMAR (including, among others, Addenda, the Final GMP).

- 2.1.2 Owner's Project Criteria developed by Owner and Design Professional (DP) and any architectural program developed by Owner and Design Professional.
- 2.1.3 Design Submission Documents (defined in the General Conditions) as they are approved by Owner;
- 2.1.4 Owner's Request for Qualifications (RFQ) with all addenda and exhibits thereto, and the CMAR's proposal or submission of qualifications as required by the RFQ.
- 2.1.5 Technical Specifications, Supplemental General Conditions, Project Manual
- 2.1.6 Other documents listed at Exhibit G of the General Conditions for Construction, if any, forming part of the Contract Documents.

ARTICLE 3

Interpretation and Intent

- 3.1 The Contract Documents are complementary and must be interpreted in harmony to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1.
- 3.2 Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the Contract Documents or if not specifically defined, their ordinary and common meaning.
- 3.3 The Contract Documents form the entire agreement between Owner and CMAR and by incorporation herein are as fully binding on the parties as if repeated herein. The Contract Documents supersede all prior discussions and negotiations. The Contract Documents may be amended or modified only in writing executed by Owner and CMAR.

ARTICLE 4

Ownership of Documents

- 4.1 The Owner, through its separate agreement with the Design Professional, shall own all drawings, specifications, and other documents and electronic data furnished by Design Professional. CMAR shall have no right or interest in such documents, except for the right to use in rendering services during the pre-construction phase and construction phase.
- 4.2 The Owner shall also own any and all estimates of Construction Costs and other estimates and all schedules, value engineering submissions, or other work products furnished by CMAR or Design Professional to Owner.

ARTICLE 5

Contract Time

5.1 Owner and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. CMAR understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration to this Agreement.

"Contract Time(s)" means, as to the entire Work, as to each phase of the Work if the Work is to be done in phases and as to each portion of the Work that the Owner has agreed to accept separately, (I) the Date of Commencement, (II) any interim milestone dates agreed to by Owner and CMAR, (III) the time for Substantial Completion, and (IV) the time for Final

Completion, as specified in this Article 5 and if there is to be phasing as provided in accordance with Section 5.7.1 below.

5.2 Date of Commencement

5.2.1 The construction Work shall commence (hereinafter referred to as the “**Date of Commencement**”) within five (5) days of CMAR’s receipt of Owner’s Notice to Proceed for the construction Work, for a phase of the Work if the Work is to be done in phases or for a portion if the Work the Owner has agreed to accept a portion separately, unless the parties mutually agree otherwise in writing. If the Work is done in phases or portions, the Date of Commencement for the entire Work is the Date of Commencement of the first phase or portion.

5.3 Substantial and Final Completion

5.3.1 Substantial Completion (defined in the General Conditions) of the entire Work shall be achieved no later than **ENTER DATE (# DAYS)** after the Date of Commencement for the entire Work, subject to adjustments in accordance with the Contract Documents.

5.3.2 If the Work is to be done in phases or if the Owner has agreed to accept one or more portions of the Work separately, there will be a separate Substantial Completion Date for each phase or portion. The Substantial Completion Date for each phase or portion will be established by the Owner, in the case of phasing as provided in Section 5.7.1 below.

5.3.3 The date for Substantial Completion of the entire Work or for a phase or portion of the Work is referred to as the “**Substantial Completion Date**”.

5.3.4 To the extent specified below in this Section 5.3.4, interim milestones shall be achieved as follows, subject to adjustments in accordance with the Contract Documents:

<u>Part of the Work</u>	<u>Interim Milestone Date</u>
_____	_____
_____	_____

5.4 Final Completion. Final Completion of the entire Work or portion or phase thereof shall be achieved within **thirty (30)** calendar days after the date established for Substantial Completion of the entire Work or the portion or phase of the Work, respectively.

5.5 Requirement for Changes to Contract Time(s). Changes to Contract Time(s) may be made only by written Change Order executed by CMAR and Owner.

5.6 Liquidated Damages. CMAR understands that if Substantial Completion of the entire Work, of any phase of the Work if the Work is to be done in phases, or of a portion of the Work that the Owner has agreed to accept a portion separately is not attained by the Substantial Completion Date(s) provided in Section 5.3 or as provided in Section 5.7.1 below, as adjusted in accordance with the Contract Documents (a “Scheduled Substantial Completion Date”), Owner will suffer damages which are difficult to specify and accurately ascertain. CMAR agrees that if Substantial Completion of the entire work, of any phase of

the Work if the Work is to be done in phases, or of any portion of the Work that the Owner has agreed to accept a portion separately is not attained by the respective Scheduled Substantial Completion Date, CMAR shall pay Owner **One thousand dollars (\$1,000.00)** as liquidated damages for each calendar day that Substantial Completion of the entire Work, of any phase of the work if the Work is to be done in phases, or of any portion of the Work that the Owner has agreed to accept separately extends beyond the respective Scheduled Substantial Completion Date. In addition, if Final Completion of the entire Work, of any phase of the Work if the Work is to be done in phases, or of any portion of the Work that the Owner has agreed to accept separately is not attained within the time period prescribed by Section 5.4, CMAR shall pay Owner **One thousand dollars (\$1,000.00)** as liquidated damages for each calendar day that Final Completion of the entire Work, of any phase of the work if the Work is to be done in phases, or of any portion of the Work that the Owner has agreed to accept separately extends beyond the required date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion or both of the entire Work, of any phase of the Work if the Work is to be done in phases, or of any portion of the Work that the Owner has agreed to accept separately on or after the established dates, except those identified in 5.7, Special Damages.

- 5.7 Special Damages: In addition to the amounts provided for liquidated damages, CMAR shall pay District the actual costs reasonably incurred by District for the District Representative, the Project Designer and for engineering and inspection forces employed on the Work for each day that expires after the time specified in Section 5 for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete.
- 5.8 District may withhold and deduct from any payment due to CMAR the amount of liquidated damages, special damages, and other costs, such as CMAR's failed testing costs or damages to other District property, from any monies due CMAR under this Agreement.
- 5.9 When the Owner has determined that the design and construction of the Project will be done in phases. The following provisions apply to phasing:
 - 5.9.1 The Owner will consult with the CMAR and the Design Professional as to (i) the number of phases, (ii) the content of each phase, (iii) the timing and scheduling of design and construction of each phase (including, among other matters, the Commencement Date, the Substantial Completion Date and the Final Completion Date of each phase), (iv) the coordination among the phases, and (v) any other matters relating to phasing. The Owner, the CMAR and the DP shall use their good faith best efforts to reach a consensus on all such matters. As to any such matters on which a consensus is not reached, the Owner shall make a reasonable final determination.
 - 5.9.2 The CMAR's Construction Phase Services Fee and the Contract Time(s) take into account phasing and the greater scope of services required by phasing.
 - 5.9.3 Some of the provisions of the Contract Documents specifically deal with phasing. Other provisions do not specifically deal with phasing. If the design and construction of the Project are to be done in phases, all the provisions of the

Contract Documents shall be reasonably construed and interpreted to cover phasing of the design and construction.

ARTICLE 6

Guaranteed Maximum Price

- 6.1 The GMP is the Guaranteed Maximum Price for the entire Work provided by CMAR under this Agreement (defined in Section 1.2 of the General Conditions). No construction Work shall commence until Owner has approved in writing a GMP for the entire Scope of Work to be performed within the GMP. Unless otherwise provided in the Contract Documents, CMAR's GMP is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements and all fees, general conditions, bonds and insurance.
- 6.2 If the Guaranteed Maximum Price requires an adjustment due to changes in the construction Work, the cost of such changes shall be priced under Section 10.4 of the General Conditions.
- 6.3 For agreed-to Owner-caused construction delays CMAR will provide all the necessary extended general conditions for the daily sum of **\$ Add Daily General Conditions Amount**.

ARTICLE 7

Procedure for Payment

- 7.1 Progress Payments
 - 7.1.1 For construction phase services, CMAR shall submit to Owner on the last business day of each month CMAR's application for payment in accordance with Article 7 of the General Conditions.
- 7.2 Interest. Payments due and unpaid by Owner to CMAR, whether progress payments or final payment, shall bear interest as provided by law unless payment is withheld by Owner for non-performance by CMAR.
- 7.3 Record Keeping and Finance Controls. With respect to all Work performed by CMAR, its Subcontractors and Consultants under this Agreement, CMAR, its Subcontractors and any Consultants, shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management using accounting and control systems approved by the Owner. During performance of the Work and for five (5) years after final payment for the entire Work (even if the Work is done in phases or portions), the CMAR shall retain and shall also require all Subcontractors and any Consultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct, indirect, and overhead costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the CMAR at any time during or after the Work as the Owner may request. The CMAR shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or any Consultant payment applications or invoices and such Subcontractor's or any Consultant's progress payment checks. The requirements of this Section 7.3 shall be included in all contracts between the CMAR and its Subcontractors and any Consultants employed by the CMAR.

ARTICLE 8

Termination for Convenience

- 8.1 This Agreement may be cancelled pursuant to ARS 38-511. Upon ten (10) days' written notice to **CMAR**, **Owner** may, for its convenience and without cause, elect to terminate this Agreement. In such event, **Owner** shall pay **CMAR** for any cost or expense necessarily incurred in connection with any construction Work completed to date, and reasonable costs or expenses attributable to such termination, including demobilization costs and the prorated portion of the Fee based upon the Work completed.

ARTICLE 9

Representatives of the Parties

9.1 Owner's Representatives

- 9.1.1 Owner designates Colleen McCabe at 1226 W. Osborn Road, Phoenix, AZ 85013 as its Senior Representative ("**Owner's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.2.2 of the General Conditions.
- 9.1.2 Owner designates Paul Hartley, The H2 Group, LLC at 14050 N. 83rd Avenue, Suite #290, Peoria, AZ 85381 as its representative ("**Owner's Representative**"), which individual has the authority and responsibility set forth in the Contract Documents.

9.2 CMAR's Representatives

- 9.2.1 CMAR designates **ENTER NAME, (Project Director); ENTER ADDRESS** as its Senior Representative ("**CMAR's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.2.2 of the General Conditions.
- 9.2.2 CMAR designates **ENTER NAME, (Project Manager); ENTER ADDRESS** as its representative ("**CMAR's Representative**") which individual has the authority and responsibility set forth in the Contract Documents.
- 9.2.3 CMAR designates **ENTER NAME, (Superintendent); ENTER ADDRESS** as its construction superintendent ("**Construction Superintendent**"), which individual has the authority and responsibility set forth in the Contract Documents.
- 9.2.4 CMAR's Project Manager and Construction Superintendent, as approved by the Owner, shall not be replaced without the Owner's prior written approval.

9.3 CMAR Representations

- 9.3.1 CMAR was a member of the Project Team for this Project and participated in and provided recommendations concerning the Contract Documents and Project Design.
- 9.3.2 CMAR has examined and carefully studied the Contract Documents (including any Addenda) and other related data, including "technical data" and all federal, state, and local laws, ordinances, standards, rules and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 9.3.3 CMAR has obtained and carefully studied (or assumes responsibility for having done so) the reports of investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) and the drawings of physical conditions in or relating to existing surface or subsurface structures, at or contiguous to the site or otherwise which may affect costs, progress, performance or furnishing all the Work or which relate to any aspect of

the means, methods, techniques, sequences and procedures of construction to be employed by CMAR and safety precautions and programs incident thereto. CMAR acknowledges that District and District's Representative do not assume responsibility for the accuracy or completeness of information and data shown or indicated therein with respect to underground facilities at or contiguous to the site. CMAR acknowledges full responsibility for locating and resolving any conflicts with any underground facilities.

- 9.3.4 CMAR has visited the site(s) and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.
- 9.3.5 CMAR has made or caused to be made examinations, investigations, tests, studies, and related data as it deems necessary, and CMAR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- 9.3.6 CMAR has correlated the information known to CMAR including, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, reports, and data, with the terms and conditions of the Contract Documents.
- 9.3.7 CMAR has given the Design Professional written notice of all conflicts, errors, or discrepancies that CMAR has discovered in the Contract Documents, and the written resolution thereof by the Design Professional is acceptable to the CMAR, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CMAR assumes full responsibility and liability for any conflicts, errors or discrepancies in the Contract Documents, including, but not limited to, the specifications, design and engineering for the project, for which written notice has not been provided and which a reasonable CMAR, participating in the design process would have discovered.

ARTICLE 10

Bonds and Insurance

- 10.1 Insurance
CMAR shall procure the insurance coverages required by Article 6 of the General Conditions. Insurance certificates shall be submitted to Owner at the times specified in Section 6.2 of the General Conditions.
- 10.2 Bonds
CMAR shall provide performance and payment bonds as provided in Section 6.1 of the General Conditions. The bonds shall be in the forms in Exhibit A to the General Conditions.

ARTICLE 11

Other Provisions

- 11.1 Any Consultants and Subcontractors submitted and approved as pre-qualified by the Owner shall not be replaced without the Owner's prior written approval. Any additional costs due to an approved change of Subcontractor or Consultant without a change in the scope of Work shall not be the Owner's responsibility and will not increase the Guaranteed

Maximum Price. CMAR represents that it has the necessary financial resources to fulfill its obligations under the Contract Documents and has the necessary corporate approvals to execute this Agreement and perform the work as described herein.

11.2 **Fiduciary Duty**

This is an Agreement for complete construction services using the Construction Manager at Risk project delivery method. CMAR has participated in the design process, been an active member of the Project Team, and is fully aware of any issues and constraints involved in the construction project.

11.3 **“Open Book” Project**

This project is an “open book” project. The Owner and its designated representatives are entitled to attend any and all meetings and the Owner and its designated representatives shall have full access to any and all records of the CMAR or maintained by CMAR relating to the Project.

ARTICLE 12

Employment

- 12.1 In connection with the performance of work under this Agreement, the CMAR and its subcontractors warrant compliance with all applicable Arizona and Federal Laws including A.R.S. 41-4401 which relate to their employees including compliance with the E-verify requirements under ARS 23-214(A). CMAR or its subcontractors’ failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Owner.

ARTICLE 13

Approval of Governing Board and Others

- 13.1 Osborn School District Governing Board approval is required before Owner may legally obligate itself to construct and pay for the construction of the Project. In addition to the Governing Board approval, approvals by legislative bodies or others may also be required. Anything in the Contract Documents to the contrary notwithstanding, any obligation of Owner under the Contract Documents to construct and pay for construction of the Project is subject to the above-described approvals.

ARTICLE 14

Special Provisions

14.1 **Offshore Performance**

Due to security and identity protection concerns, direct services under any subsequent contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the school district(s) or charter school(s) or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

14.2 **Contractor’s Employment Eligibility**

By entering the Agreement, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23- 214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The District may request verification of compliance from any contractor or subcontractor performing work under this Agreement. The District reserves the right to confirm compliance in accordance with applicable laws.

Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

14.3 Israeli Boycott
Per A.R.S. 35-393, Contractor certifies that for the duration of the Agreement, they will not engage in a boycott of Israel.

14.4 Fingerprint Checks
If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. An exception to this requirement may be made as authorized in Governing Board policy. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors, or Offerors and their employees for which fingerprints are submitted to the District. Contractor, subcontractors, Offerors and their employees shall not provide services on school district properties until authorized by the District. Additionally, contractor shall comply with the governing board fingerprinting policies of each individual school district.

14.5 Registered Sex Offender Restriction
No employee of the vendor, or a subcontractor of the vendor, who has been adjudicated to be a registered sex offender, may perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. A violation of this condition may result in the cancellation of this Agreement at the District's discretion.

CMAR:

ENTER NAME

OWNER:

**OSBORN SCHOOL DISTRICT
GOVERNING BOARD**
For and on behalf
OSBORN SCHOOL DISTRICT #8

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date:

Date:

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

Date Issued: **ENTER DATE**

School District Project No.: **ENTER PROJECT NO.**

School District Project Name: Instructional Learning Spaces Updates and Configurations

OWNER

OSBORN SCHOOL DISTRICT GOVERNING BOARD

for and on behalf of

**OSBORN SCHOOL DISTRICT #8
1226 W. Osborn Road
Phoenix, Arizona 85013**

CMAR

CMAR NAME
CMAR ADDRESS
XXX X. XXXXX XXX
Xxxxxxx, Arizona XXXXX

CONSTRUCTION MANAGER AT RISK (CMAR)

GENERAL CONDITIONS FOR CONSTRUCTION

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ARTICLE 1
GENERAL ARTICLES

1.1 MUTUAL OBLIGATIONS.

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

1.2 BASIC DEFINITIONS

1.2.1 The definitions set forth in the Construction Manager at Risk Pre-Construction Services Agreement dated **ENTER DATE** shall apply in addition to the definitions set forth in this General Conditions for Construction document.

“Addenda” are written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements and become part of the Contract Documents.

“CMAR” means the CMAR and all persons and entities identified as members of the CMAR Project Team in the CMAR’s response to the Owner’s RFQ dated **ENTER RFQ DATE**, with amendments and any substitutions permitted under the terms of the RFQ and these General Conditions and the Standard Form of Agreement Between Owner and Construction Manager at Risk. During construction, the CMAR assumes all risk for price and schedule under the GMP.

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

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

“Contingency” is the amount in the GMP for costs incurred in the Work from unforeseen conditions or for addition of Work as determined to be beneficial by the District.

“Cost of the Work” The sum of all allowable costs that would be incurred by the CMAR directly or through Subcontractors and/or Suppliers in properly furnishing and performing the Work required by the Contract Documents for the construction phase. Cost of Work consists of those items of the entire Work, which are paid for by the Owner to the CMAR.

“Day” and **“Days”** mean calendar days. **“Calendar Day”** Every day shown on the calendar including Saturdays, Sundays, and holidays.

“Design Professional (DP)” is a representative of the Owner as provided in the Contract Documents whose agreement is with the Owner and who is a qualified DP

properly licensed in the State of Arizona to furnish design and construction administration services.

District's PM (PM): The person, firm or corporation designated by the District to administer this Agreement on behalf of District. The District's PM for this project is The H2 Group, LLC.

"Guaranteed Maximum Price" or "GMP" is the maximum compensation payable to the CMAR in performance of the Work for the Project as specified in the Contract Documents.

"Legal Requirements" are any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental or quasi-governmental entity, authorities, and courts including federal, state and local having jurisdiction over the Work, the practices involved in the Work, or any work performed.

"Open Book Cost" is the Actual Cost of the Work as compiled and recorded in accordance with the provisions of Subsection 2.1.12 of these General Conditions.

"Project Budget" is the total cost to the Owner for the Project, including all sums to be paid to or for the DP, the Work, other consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, and other incidentals required to achieve Project Final Completion.

"Punch List" are those minor items of Work identified and listed by DP and agreed to by Owner **in writing** to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.

"Savings" is the positive amount difference, if any, between the Guaranteed Maximum Price and the Actual Cost of the Work and shall be allocated as set forth in Article 7. Savings is determined based on the GMP as in effect on the date of Final Completion of the entire Work. Savings shall be returned to the Owner through a Deductive Change Order, or at the Owner's option, used as directed for additional work.

"Site" is the land and other areas on which the Project is located.

"Specifications" are the part(s) of the Construction Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subcontractor" is any person or entity at any tier of relationship to CMAR who performs a part of the Work, on or off site, directly on behalf of the CMAR, including any material men, workers and suppliers, and shall include all employees, agents and authorized representatives of such persons or entities.

"Supplier" is any manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct Agreement with CMAR or any Subcontractor.

“Substantial Completion” is the date on which the construction Work, or an agreed upon phase or portion of the construction Work, is sufficiently complete, as determined by the DP’s issuance of a Certificate of Substantial Completion, so that Owner can fully occupy and utilize the Project, or an agreed upon portion or phase thereof, for the purposes for which it is intended. The following are conditions precedent for Substantial Completion. Full or partial occupancy or use of the facility by the Owner, in and of itself, shall not constitute Substantial Completion:

1. Inspection, approval and occupancy permit issued by regulatory agencies having jurisdiction and without conditions. Conditional occupancy permits do not satisfy Substantial Completion requirements.
2. All building systems are in place, functional and accepted by the consultants.
3. HVAC system is tested and balanced with a preliminary balance report submitted to, and accepted by the Consultant and the Owner.
4. Facilities are able to be secured by the Owner.
5. All landscape and site work completed.
6. Odor and fume generating activities are complete. This includes work such as painting, staining, floor installation, etc. This also includes odor generating activity that originates in non-occupied spaces but could enter and contaminate occupied areas.
7. Final cleaning is complete, and all construction air filters have been replaced with clean, permanent air filters.
8. All dust generating activity within occupied spaces has been completed. This includes dust generating activity that originates in non-occupied spaces but could enter and contaminate occupied areas.
9. Draft submittals of O & M manuals have been submitted and accepted by the Consultant and Owner, and operation and maintenance training necessary for the Owner’s personnel to maintain operation and occupancy of the facility has been completed. Contractor remains liable and responsible for any damage to systems or equipment until Owner receives this information and training.
10. All conveying systems, mechanical, plumbing, electrical, life safety and security or other special systems and equipment are complete and operational to the extent that the Owner can safely and comfortably use and occupy the facility.
11. Remaining punch-list items do not represent a hazard to the Owner and occupants in order for the contractor and his subcontractors to complete. Completion of punch-list items should not cause interruption or disruption to the Owner’s functions due to noise, dust, odor, etc., or they must be accomplished and completed during off-hours convenient to the Owner’s operations and at no added cost to the Owner.

“Final Completion” is defined as 100% completion of all Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner’s Project specifications and Owner training/start up activities.

“Work” is all activities by the CMAR required to complete the Project as defined by the Project Criteria and the Contract Documents, including, without limitation, activities during the preconstruction phase and during the construction phase. The construction phase activities include procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents.

“Written Amendment” is a written modification to the Contract Documents, signed by the District and the CMAR on or after the Effective Date of this Agreement normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Construction Documents.

ARTICLE 2

CMAR'S SERVICES AND RESPONSIBILITIES

2.1 GENERAL MATTERS AS TO CMAR

- 2.1.1 During the construction phase, the CMAR's Representative and Superintendent shall be at the Site at all times when work is being performed and shall have the necessary expertise and experience required to supervise the construction Work. CMAR's Representative shall communicate regularly with Owner and DP and shall be vested with the authority to act on behalf of CMAR. CMAR's Representative and CMAR's Superintendent may only be replaced with the mutual written agreement of Owner and CMAR. Notwithstanding the foregoing, the CMAR's Representative and CMAR's Superintendent will be replaced upon reasonable request of the Owner.
- 2.1.2 The CMAR shall provide Owner and DP, on a monthly basis during construction of the work, a written status report detailing the progress of the Work, including whether the Work is proceeding according to schedule in accordance with these General Conditions Section 2.4.16, Schedule and Coordination. Each report shall include: An updated Critical Path Method (CPM) schedule; an updated Work cash flow Projection for the duration of the Project; copies of the CMAR's Superintendent's daily site reports made during the preceding month; identification of discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution; identification of any health and safety issues that have arisen in connection with the Work; and identification of other items that require resolution so as not to jeopardize CMAR's ability to complete the Work for the Guaranteed Maximum Price and within the Contract Time(s).
- 2.1.3 Within 14 days of executing this Agreement CMAR shall prepare and submit to Owner a Critical Path Method (CPM) Master Schedule for the Work. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required and all necessary shutdowns or suspensions of Owner or separate vendor activities on the Site (if any). The schedule shall include multiple bid packages and phased construction if required by Owner.
- 2.1.4 The Owner, DP, and CMAR will hold a pre-construction meeting after execution of this Agreement to review issues affecting the administration of the Work and to implement procedures to permit the Owner, DP, and CMAR to perform their obligations under the Contract Documents as set forth in Section 2.5.8.3.

If a “partnering” process is to be implemented during the construction phase of the Work, the Owner, CMAR and the DP will review the partnering process for the construction phase and establish procedures for the construction phase of the Work, including, among other matters, handling of submittals and Owner site activities schedules. The cost of this partnering effort during the construction phase will be

shared equally by the CMAR, Owner, and DP.

- 2.1.5 The CMAR shall cooperate fully with the Owner and DP in the design and construction and keep the Work within the applicable portions of the Owner's Project Budget and within the schedule limitations.
- 2.1.6 The CMAR understands the relationship of trust and confidence established between it and the Owner and accepts those responsibilities as described in this Agreement. The CMAR covenants with the Owner to furnish its best skill and judgment and to cooperate with the DP in furthering the interests of the Owner. The CMAR agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the Work in an expeditious and economical manner consistent with the interest of the Owner.
- 2.1.7 The CMAR, the Owner, and the DP, called the "**Construction Team**", shall cooperatively work together during all phases of the Project in which they are involved to achieve timely completion of the Project within Owner's Project Budget. The CMAR shall provide leadership to the Construction Team during the construction phase for all cost and schedule issues and on all matters relating to construction. The CMAR shall record and distribute minutes of each meeting.
- 2.1.8 The Contract Documents shall not be deemed to create any contractual relationship between the DP and the CMAR or any separate contractors, subcontractors of any tier or material men or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the Owner, the DP or CMAR which does not otherwise exist without regard to the Contract Documents.
- 2.1.9 Subject to any exculpatory provisions of the General Conditions, execution of this Agreement by the CMAR is a representation that the CMAR has visited the Site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Owner's Project Criteria.
- 2.1.10 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. Work not covered in the Contract Documents but necessary for the proper completion of the Work will be included unless it is inconsistent with the Contract Documents and is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations, which have well known technical or trade meanings, are used in the Contract Documents in accordance with such recognized meanings.
- 2.1.11 The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not control the CMAR in dividing the construction Work among Subcontractors or in establishing the extent of the construction Work to be performed by any trade.
- 2.1.12 **Open Book Cost**
With respect to all Work performed by the CMAR, its Subcontractors and Consultants under this Agreement, CMAR, its Subcontractors and Consultants shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the Owner. During the performance of the Work and for five (5) years after Final Payment, the CMAR shall retain and shall also require all Subcontractors and Consultants to retain for

review and audit, or both, by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all communications, direct and indirect costs and all other matters relating to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the CMAR at any time during or after the Work as the Owner may request. The CMAR shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant's progress payment checks. The requirements of this Section shall be included in all contracts between the CMAR and its Subcontractors and Consultants. The Owner may exercise its rights under this Section as often as reasonably necessary in the Owner's sole judgment to assure the Owner has a complete and accurate understanding of all Project costs.

2.2 LEGAL REQUIREMENTS

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

2.3 GOVERNMENT APPROVALS AND PERMITS

- 2.3.1 Unless otherwise specifically provided in the Contract Documents, CMAR shall obtain and pay for all necessary approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. The actual cost for permit fees shall be paid from a Permit Fee Allowance amount identified in the GMP. No mark-up is allowed. Any unused Permit Fee Allowance amount shall be returned to the Owner through a Deductive Change Order. At the Owner's option, the Owner may pay regulatory fees directly to the permitting governmental agency in lieu of using a Permit Fee Allowance in the GMP. CMAR shall be responsible for determining the process for payment of permits with the Owner as part of the GMP preparation.

2.4 CMAR'S CONSTRUCTION PHASE SERVICES

- 2.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, CMAR's construction phase services shall include, without limitation: team management and coordination, scheduling, cost controls and change order management, submittal process management, subcontracting, field management, safety program, close-out process, and warranty period services. This shall include providing through itself or its Subcontractors all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CMAR to complete all construction Work in accordance with the Construction Documents.
- 2.4.2 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

- 2.4.3 CMAR shall only employ Subcontractors who are properly licensed and fully committed and competent with sufficient resources and manpower to perform the construction Work consistent with the Construction Documents and with the same degree of skill, quality and competence as CMAR.
- 2.4.4 CMAR is fully responsible for its Subcontractors' work and any acts and omissions in connection with the performance of its Subcontractors' work. Nothing in the Contract Documents is intended or shall be deemed to create any legal or contractual relationship between Owner and a Subcontractor. In addition, nothing in the Contract Documents is intended or shall be deemed to create any third-party beneficiary rights.
- 2.4.5 CMAR is responsible for coordinating the activities of all Subcontractors. If Owner is performing other work with separate contractors under its control, CMAR agrees to cooperate and coordinate its work with the work of Owner's separate contractors so that the Project and any separate project(s) on which the separate contractors are working can be completed in an orderly and coordinated manner reasonably free of significant disruption to any party. In this regard:
- 2.4.5.1 The Owner reserves the right to award other contracts related to the Project, or to perform certain work itself. The Owner also reserves the right to award other contracts unrelated to the Project but involving work in the vicinity of the Project or to perform unrelated work itself. Such other work may or may not be known to the Owner or disclosed to the CMAR prior to the date of this Agreement. The Contractor shall afford the Owner and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly coordinate its Work with theirs in such manner as the Owner may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the Site and their work.
- 2.4.5.2 Should the CMAR sustain any damage through any act or omission of any other contractor, CMAR shall not have claim or cause of action against the Owner for such damage and hereby waives any such claim. The CMAR does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall include, but not be limited to, any reasonable delay by any such other contractors, whether due to negligence, gross negligence, inadvertence, or any other cause.
- 2.4.5.3 Should the CMAR cause damage to the work or property of any other contractor or of the Owner, the CMAR shall upon receiving due notice promptly attempt to settle with such other contractor or the Owner by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused by the CMAR, the Owner shall notify the CMAR who, at Owner's option, shall defend and indemnify owner for such proceedings and pay the costs of Owner defending such proceedings, and if any judgment or award against the Owner arises therefrom the CMAR shall pay or satisfy it in its entirety to the extent such damage is caused by CMAR and shall reimburse the Owner for all attorney's fees and court or other costs which the Owner has incurred.
- 2.4.6 CMAR shall keep the Site free from debris, trash and construction waste to permit CMAR to perform its construction services efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic

appearance of the jobsite and all storage/staging areas. Upon Substantial Completion of the entire Work or a portion of the Work or, if the construction Work is divided into phases, a phase of the Work, CMAR shall remove all debris, materials, wastes, equipment, machinery and tools from the Work to permit Owner to occupy the entire Work or a portion or phase of the Work for the use in which it is intended.

- 2.4.7 Any changes affecting previously approved Work shall require prior written approval of the Owner.

2.4.8 CONTROL OF THE WORK

2.4.8.1 The CMAR shall supervise and direct the work of its employees and Subcontractors and coordinate the Work with the activities and responsibilities of the Owner and the DP to complete the Work in accordance with the Contract Documents.

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

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

2.4.9 DAILY LOG

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

2.4.9.1.1 Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Site, and any other weather conditions which adversely affect Work at the Site;

2.4.9.1.2 Soil conditions which adversely affect Work at the Site;

2.4.9.1.3 The hours of operation by CMAR and individual Subcontractor personnel;

2.4.9.1.4 The number of CMAR and Subcontractor personnel present and working at the Site, by subcontract and trade, and updated schedule activity number.

2.4.9.1.5 The equipment active or idle at the Site;

2.4.9.1.6 A description of the Work being performed at the Site by updated schedule activity number;

2.4.9.1.7 Any delays, disruptions or unusual or special occurrences at the Site;

2.4.9.1.8 Materials received at job Site; and

2.4.9.1.8.1 A list of all visitors at the Site.

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

2.4.10 SUPERVISION AND CONSTRUCTION PROCEDURES

- 2.4.10.1 The CMAR shall supervise and direct the Work, using the CMAR's best skill and attention. The CMAR shall be solely responsible for the coordination and accomplishment of all portions of the Work under the Contract Documents.
- 2.4.10.2 The CMAR shall be responsible to the Owner for the acts and omissions of the CMAR's employees, Subcontractors, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with the CMAR.
- 2.4.10.3 The CMAR shall not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities or duties of the DP in its administration of this Agreement or by inspections, tests or approvals required or performed by persons other than the CMAR. Nothing contained in this Section 2.4.10.3 shall preclude the CMAR from asserting any rights it may have under this Agreement in the event of unreasonable delays to the CMAR in the making of any inspections, test, approvals, or other action by the DP upon which the CMAR is dependent.
- 2.4.10.4 The CMAR shall employ a competent Construction Superintendent who is Owner-approved and necessary assistants, who shall be in attendance at the Site during the progress of the Work. The CMAR shall also employ the CMAR Representative and CMAR Senior Representative who are Owner-approved together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction. The superintendent and representatives shall not be changed except with the consent of the Owner, unless the superintendent or representative ceases to be in the employment by CMAR. The superintendent and representatives shall represent the CMAR and all communications given to either representative shall be binding on the CMAR. All oral communications shall be confirmed in writing.
- 2.4.10.5 The CMAR shall at all times enforce strict discipline and good order among its employees and its Subcontractors' employees and shall not allow employment on the Work of any unfit person or anyone not skilled in the task assigned to them.
- 2.4.10.6 The CMAR shall at all times allow the Owner, DP, or any other designated representatives access to the Work to observe progress and inspect the quality of work and conformance to the Construction Documents.
- 2.4.10.7 Any Work required to be inspected by the DP and/or the Owner prior to being covered, which is covered up without prior inspection or without prior consent of the DP and/or the Owner, must be uncovered and recovered by the CMAR, if requested by the DP or the Owner, at no cost to Owner, notwithstanding the provisions of the following Subsection.
- 2.4.10.8 CMAR shall notify the Owner and DP in writing at least 48 hours prior to the time at which the Owner or DP must be present to perform an inspection. Failure to provide such notice shall make the CMAR solely responsible for all consequences of non-inspection and any required access to the Work.

2.4.11 ADMINISTRATION

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

DP's
Representative:
ENTER NAME

CMAR's
Representative:
ENTER NAME

Owner's
Representative:
ENTER NAME

2.4.12 DRAWINGS AND SPECIFICATIONS

- 2.4.12.1 The CMAR shall analyze and compare the Construction Documents in advance of beginning each phase or portion of the Work and immediately report to the DP and Owner any material error, inconsistency, conflict, ambiguity, or omission.

- 2.4.12.2 The drawings included in the Construction Documents are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Where required, the CMAR shall perform no portion of the Work without approved shop drawings, product data or samples; any Work performed in violation of this provision will be solely at the CMAR's risk regardless of DP's and/or Owner's knowledge of such Work.

- 2.4.12.3 In the event of any conflict or ambiguity the Construction Documents shall be interpreted as being complementary, requiring a complete Project or designated portion or phase thereof. Any requirement occurring in any one of the construction documents is as binding as though occurring in all Construction Documents. Generally, the specifications address quality, types of materials and contractual conditions while the drawings show placement, sizes, and fabrication details of materials. In the event of any conflict in the Construction Documents, the priorities stated below shall govern:

- A. Addenda shall govern over all other Construction Documents and subsequent addenda shall govern over prior addenda only to the extent modified.
- B. In case of conflict between drawings and specifications, the specifications shall govern.
- C. Conflicts within the drawings:
 - (1) Schedules, when identified as such, shall govern over all other portions of the drawings.
 - (2) More specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in Section 2.4.12.3(C)(1) above.
 - (3) Larger scale drawings shall govern over smaller scale drawings.
 - (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- D. Conflicts within the specifications: These General Conditions shall govern over all sections of the specifications except for specific modifications to these General Conditions that may be stated in supplementary general conditions or addenda. No other section of the specifications shall modify these General Conditions.
- E. If provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry

standards are in conflict, the more restrictive or higher quality shall govern.

F. In the event of any conflict or ambiguity, the CMAR shall request an interpretation by the DP before performing the Work.

- 2.4.12.4 If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "Minor detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or materials so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

2.4.13 SUBMITTALS, DRAWINGS AND SHOP DRAWINGS

- 2.4.13.1 The CMAR shall maintain at the Site, for the use of the Owner and of the DP, one copy of all drawings, specifications, bulletins, addenda, Change Orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their modifications, if any, in good order and marked daily by the CMAR to record all approved changes made during construction. All these shall be turned over to the DP by the CMAR at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the Owner.
- 2.4.13.2 The CMAR shall submit to the DP, promptly and in no event, as to cause delay in its Work or in that of any other contractor, all submittals and shop drawings as required by the Construction Documents, or as necessary to illustrate details of the Work.
- 2.4.13.3 Each submittal and shop drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the shop drawings. Each series shall be numbered consecutively for ready reference and each submittal and shop drawing shall be marked with the following information:
- 2.4.13.3.1 Date of submission
 - 2.4.13.3.2 Name of Project
 - 2.4.13.3.3 Location of Project
 - 2.4.13.3.4 Branch of Work (specification section)
 - 2.4.13.3.5 Project number
 - 2.4.13.3.6 Name of submitting CMAR
 - 2.4.13.3.7 Name of Subcontractors
 - 2.4.13.3.8 Revision number
- 2.4.13.4 All Subcontractor submittals and shop drawings shall be reviewed by the CMAR prior to being submitted to the DP and shall bear written statement by the CMAR that the submittals and shop drawings are consistent with the Contract Documents. Any submittals or shop drawings submitted without this approval will be returned for resubmission; the submittals or shop

drawings will be considered as not having been submitted, and any delay caused thereby shall be the CMAR's sole responsibility. This review by CMAR of Subcontractor submittals and shop drawings shall not be construed as CMAR approval of the design therein except that it shall be a representation that the letter accompanying the submittal or shop drawings does indicate all deviations from the DP's drawings and specifications as required by Section 2.4.13.5. Deviations from the DP's drawings and specifications must be approved in writing and shall only be considered if they are "Prior Approved" submittals requested prior to the Final GMP, unless otherwise authorized by the Owner and DP.

- 2.4.13.5 The CMAR shall include, with submittals and shop drawings, a letter indicating all deviations from the DP's drawings and specifications in accordance with Section 2.4.13.4. Failure to so notify the DP of such deviations will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the deviations are not acceptable, the CMAR must furnish the item as specified or as indicated on the drawings included in the Construction Documents.
- 2.4.13.6 It is the CMAR's obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and shop drawings shall indicate in detail all parts of an item of Work, including erection and setting instructions and engagements with work of other trades or other separate contractors.
- 2.4.13.7 By reviewing or submitting submittals and/or shop drawings, the CMAR thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each submittal and/or shop drawing with the requirements of the Work and of the Construction Documents. If any specified material item or part is not available, the CMAR shall so indicate to the DP.
- 2.4.13.8 The DP shall review and approve submittals and shop drawings and return them to the CMAR within ten (10) days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the CMAR must agree upon a 10-day review period for each submittal or set of shop drawings. For complex submittals, the CMAR must agree upon two 10-day review cycles. If review and approval are delayed beyond ten (10) days, the DP shall notify the CMAR and the Owner in writing stating the reason for the delay. Approval shall not relieve the CMAR from the responsibility for deviations from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of the Owner to affect an improvement in the Work and does not increase the Guaranteed Maximum Price or Contract Time(s). Any such modification is subject to all other provisions of the Construction Documents and is without prejudice to any and all rights under any surety bond.
- 2.4.13.9 If the DP returns a submittal or shop drawing to the CMAR with the notation "rejected", "revise and resubmit", or "approved as noted", the CMAR, so as not to delay the Work, shall promptly submit a submittal or shop drawing conforming to the requirements of the Construction Documents and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. Any other differences between the resubmittal and the

prior submittal shall also be indicated on the shop drawing and on the resubmittal as a special note.

2.4.13.10 No extension of time will be granted to the CMAR because of its failure to submit submittals or shop drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the CMAR has received written approval. The CMAR shall furnish prints of its approved submittals and shop drawings to all the Subcontractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the Site.

2.4.14 PRODUCT SAMPLES, TESTS, AND CERTIFICATES

2.4.14.1 The CMAR shall furnish product samples of all items requested or required by the specifications. Product samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the DP and the Owner. CMAR shall submit product samples to the DP and/or Owner for review and approval in accordance with Sections 2.4.13.1 through 2.4.13.10 above and this Section 2.4.14.

2.4.14.2 Each product sample must be accompanied by a letter of transmittal containing the following information:

- 2.4.14.2.1 Date of submission
- 2.4.14.2.2 Name of Project
- 2.4.14.2.3 Location of Project
- 2.4.14.2.4 Branch of Work (specification section number)
- 2.4.14.2.5 Project number
- 2.4.14.2.6 Name of submitting CMAR
- 2.4.14.2.7 Name of Subcontractor

2.4.14.3 The CMAR shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the CMAR shall endorse it and submit it to the DP together with a statement of compliance in its own name.

2.4.14.4 No tests, inspections or approvals performed or given by the Owner or the DP or others acting for the Owner or any agency of Federal, State or local government nor any acts or omissions by the Owner or the DP in administering this Agreement shall relieve the CMAR from its duty to perform the Work in accordance with the Contract Documents, its responsibility as to manner and mode of construction, its duties to adhere to professional standards of its industry, and applicable law.

2.4.14.5 Unless the DP is requested at the time of submittal to return samples at the CMAR's expense, rejected samples may be destroyed.

2.4.14.6 After delivery of materials, the DP may make such tests, as it deems necessary, with samples required for such tests being furnished by and at the cost of the CMAR. Any test is for the benefit of the Owner and shall not relieve CMAR of the responsibility for providing quality control measures to assure that Work strictly complies with the Construction Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

2.4.14.7 On the basis of the test results, materials, workmanship, equipment or

accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the DP shall have the right to cause their removal and replacement by items meeting Construction Document requirements or to demand and secure appropriate reparation to the Owner from the CMAR.

2.4.15 AS-BUILT DRAWINGS

- 2.4.15.1 At Final Completion, the CMAR shall complete and turn over to the DP the as-built drawings for review by the DP. The as-built drawings shall consist of a set of drawings, which clearly indicate all field changes that were made to adapt to field conditions, field changes resulting from change directives, and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the as-built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The as-built drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color.
- 2.4.15.2 For any changes or corrections in the Work which are made subsequent to Substantial Completion, such revisions shall be submitted to the DP as part of the as-built drawings submitted under Section 2.4.15.1.

2.4.16 SCHEDULE AND COORDINATION

- 2.4.16.1 The CMAR shall schedule and coordinate the work of all of its Subcontractors on the Project including their use of the Site. The CMAR shall keep the Subcontractors informed of the Project construction schedule to enable the Subcontractors to plan and perform the Work properly.
- 2.4.16.2 Within 14 days of executing this Agreement CMAR shall submit a detailed CPM construction schedule for the entire Project or for the respective phase of the Project, which shall provide for the expeditious and practicable execution of the Work covered by the submitted schedule. The schedule shall be consistent with any previously issued schedules, not to exceed time limits current under the Contract Documents for the entire Project or for the respective phase of the Project and shall be related to the entire Work and the entire Project to the extent required by the Contract Documents.
- 2.4.16.3 The schedule for the performance of the Work or any phase of the Work as applicable shall be a CPM schedule with reasonable detail including a time scaled network and computer printout in accordance with the following requirements:
 - a) no activity shall be longer than twenty-one (21) calendar days in length except fabrication and delivery activities:
 - b) each activity must be logically tied to another activity to show its interdependency with other activities:
 - c) installation activities must be logically tied to submittal/approval, fabrication and delivery:
 - d) only a single critical path shall be designated.
- 2.4.16.4 The CMAR shall prepare and keep current, for the DP's approval, a time schedule of submittals which is coordinated with the CMAR's construction schedule and allows the DP the specified time to review submittals.

- 2.4.16.5 The CMAR's schedules shall be revised monthly to reflect ACTUAL conditions in the field. A copy of the revised schedule and narrative report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed to be taken shall be submitted with each Application for Payment. The submittal of an acceptable updated CPM schedule is a condition precedent to the processing of any application for payment made by CMAR. Owner's review of the CPM schedule update shall not be construed as relieving CMAR of its complete and exclusive control over the means, methods, sequences, and techniques of construction. The CMAR understands that the updated CPM construction schedule will be the basis for the analysis and granting of time extensions in accordance with Article 9 of these General Conditions.
- 2.4.16.6 In addition to the monthly update, the CMAR's schedules shall also be revised at appropriate intervals as required by the conditions of the Work or as directed by the Owner with a printed and electronic copy submitted to the Owner and DP in a format acceptable to the Owner.
- 2.4.16.7 The CMAR shall perform the Work within the identified times of the most recent schedule and consistent with the established Contract Time(s).
- 2.4.16.8 The parties agree that if the CMAR submits an original or updated schedule which shows the Project and/or individual milestone(s) (or phases of the Project if the Project is divided into phases) completing earlier than required by the Contract Documents (the then adjusted Contract Time(s)), the differences between the forecasted early completion and the required completion shall be considered Project owned float available for use by both the Owner and the CMAR with Owner written approval.
- 2.4.16.9 Since float time within the schedule is jointly owned, no time extensions nor delay damages shall be considered until a delay occurs which extends the Work beyond the adjusted Contract Time(s). Since float time within the construction schedule is jointly owned, it is acknowledged that Owner-caused delays on the Project may be offset by time savings. In such an event, the CMAR shall not be entitled to receive consideration for a time extension or delay damages until time savings are exceeded and the contractual completion date or milestone date is also exceeded.
- 2.4.16.10 It is agreed that no time extensions nor delay damages shall be considered unless the delay is clearly demonstrated by the updated construction schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.
- 2.4.16.11 Delay claims shall be evaluated with actual data and documentation provided by the CMAR following Substantial Completion of the Project.

2.5 CMAR'S RESPONSIBILITY FOR PROJECT SAFETY

- 2.5.1 CMAR recognizes the importance of performing its Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at or in the vicinity of the Work, whether working or visiting the Project or Campus; (ii) all Work, including materials and equipment incorporated or stored on or off Site; and (iii) all other or adjacent property. As among CMAR, DP and Owner, CMAR assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the

performance of the Work. CMAR shall, prior to commencing construction, designate a safety manager with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. The safety manager shall make routine daily inspections of the Site and shall hold at least weekly safety meetings with CMAR's personnel and its Subcontractors.

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

2.5.3 CMAR's responsibility for safety under this Section 2.5 is not intended to in any way relieve CMAR's Subcontractors from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.5.4 The requirements in this Section 2.5 supplement and are in addition to the other requirements in the Contract Documents, including, without limitation, Article 5.

2.6 WARRANTY

2.6.1 CMAR warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CMAR's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain the Work by persons other than CMAR, Subcontractors or others under CMAR's control. Nothing in this warranty shall limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.6 or the Contract Documents. CMAR will provide Owner with all manufacturers' warranties and operation and maintenance manuals upon Substantial Completion of the Work. CMAR's warranty shall be for two (2) years and will commence for all portions or phases of the Work upon Substantial Completion of the entire Work as determined by the Owner under the Contract Documents. If the Project is divided into phases or portions, this means that the warranty for each phase or portion of the Project will commence upon Substantial Completion of the last phase, as determined by the Owner under the Contract Documents. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

2.7 CORRECTION OF DEFECTIVE WORK

2.7.1 If any portion of the Work is covered over contrary to the request of the DP or Owner or as required by the Construction Documents or the applicable building standards, it must be uncovered for observation at the CMAR's expense if requested by the DP or Owner in writing.

2.7.2 If any portion of the Work, other than those portions required to be inspected by the DP, the Owner or others, prior to being covered, has been covered over, the DP or Owner may request that it be uncovered for observation.

- 2.7.3 CMAR agrees to promptly correct any Work that is found not to be in conformance with the Contract Documents, whether previously inspected by the Owner's representatives or not unless a specific written waiver of such non-conformance has been provided to the CMAR by the Owner. This obligation shall continue for a period of two (2) years from the date of Substantial Completion of the entire Work and if the Project is done in phases or portions Substantial Completion of the last phase or portion as determined by the Contract Documents. Nothing in this Section shall waive any rights that the Owner may have under Arizona law.
- 2.7.4 CMAR, upon receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, shall, within seven (7) days (except in the case of an emergency or item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps within seven (7) days, Owner, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period provide CMAR with notice that Owner will commence to correct such nonconforming Work with its own or other forces. CMAR shall be responsible for all costs and expenses that Owner incurs in remedying any Work not in conformance with the Contract Documents, including at its sole discretion any of its own staff time costs and all DP or other fees incurred. Owner will notify CMAR of its intent to make such corrections at or before the commencement of the corrective work.
- 2.7.5 The two-year period referenced in Section 2.6.1 applies only to the CMAR's obligation to correct Work not in conformance with the Construction Documents and shall not constitute a period of limitations with respect to any other rights or remedies Owner may have with respect to CMAR's other obligations under the Contract Documents or under applicable law. CMAR acknowledges that, for purposes of statutes of limitations.

ARTICLE 3

DP'S SERVICES AND RESPONSIBILITIES

- 3.1 The DP will be the initial interpreter of the requirements of the Construction Documents. The DP shall render written interpretations with reasonable promptness following a written request from the Owner or the CMAR. These interpretations shall be consistent with the intent of the Contract Documents.
- 3.2 The DP will review and approve or take other appropriate action upon the CMAR's submittals, such as shop drawings, product data and samples, for conformance with the Construction Documents. Such action shall be taken with reasonable (within 10 days) promptness as specified so as to cause no delay. The DP's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.
- 3.3 Following consultation with the Owner, the DP will take appropriate action on CMAR's requests for Contingency Use Authorization or Change Orders and may authorize minor changes in the Work as defined in Section 10.3.
- 3.4 The DP and Owner will each have authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing but will take such action only after consultation with the other. However, neither the authority to act given to the DP and the Owner under this Section 3.4 nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the CMAR, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 3.5 Based on the DP's observations of the Work, evaluation of applications for payment and consultation with the Owner, the DP will determine the amount owing to the CMAR and will issue certificates for payment.
- 3.6 DESIGN AND CONTRACT ADMINISTRATION SERVICES
- 3.6.1 The DP will provide administration of this Agreement on behalf of the Owner as described throughout this Agreement.
- 3.6.2 In interacting with the CMAR, the DP will be a representative of the Owner during construction and until the two-(2) year warranty period has expired. The DP is not the "Owner's Representative" as such term is used in the Contract Documents. The DP and the CMAR shall advise and consult with the Owner and the Owner's Representative. All instructions and communications by the DP to the CMAR shall be copied to the Owner and the Owner's Representative. The DP will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

ARTICLE 4

OWNER'S SERVICES AND RESPONSIBILITIES

- 4.1 Owner shall, throughout the performance of the Work, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.
- 4.2 Owner's Representative shall be responsible for processing Owner-supplied information and approvals or rejections in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide CMAR with reasonably prompt notice if it observes any failure on the part of CMAR to fulfill its contractual obligations, including errors, omissions or defects in the performance of its Work. Failure of the Owner or its representatives to notify the CMAR shall not reduce, change, lessen or alleviate in any way, duties and obligations under the Contract Documents.
- 4.3 The Owner shall review documents submitted by the CMAR and shall render decisions pertaining thereto without unreasonable delay.
- 4.4 Owner is responsible for all work performed at the Project by other parties directly under the Owner's control and outside these contract documents. Owner shall contractually require such parties to cooperate and coordinate their activities with CMAR so as not to interfere unreasonably with CMAR's ability to complete its construction Work in a timely manner and consistent with the Contract Documents.
- 4.5 The Owner shall reasonably cooperate with the CMAR to keep the Work within the applicable portions of the Project Budget. If at any time it is reasonably apparent to the Owner that the cost of the Work cannot be kept within the applicable portions of the Project Budget or the Guaranteed Maximum Price, the Owner will have the right, but not the obligation, to terminate this Agreement for convenience in accordance with Section 12.1.1.

ARTICLE 5

SITE CONDITIONS AND ENVIRONMENTAL MATTERS

- 5.1 The CMAR and all of CMAR's trade contractors shall thoroughly acquaint himself with all information provided by Owner concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work and shall be responsible for requesting information typically required within the industry to assess conditions for a similar Scope of Work.

- 5.2 The CMAR and CMAR's trade contractors agree that they have thoroughly examined the Site, boring data and all other available soils information and as-built data made available to it. CMAR represents and warrants to the Owner that CMAR and its trade contractors has satisfied itself as to the character, quality and quantity of surface and subsurface materials and existing obstacles to be encountered in performing the Work. The CMAR acknowledges that boring data and other soils information and as-built data made available to it is only a general indication of materials and/or conditions likely to be found adjacent to borings or in existing structures or facilities or other areas. The CMAR may rely on this information; however, if the CMAR determines that the information is erroneous, inadequate or ambiguous, it shall report its conclusions to the DP and the Owner in writing within 10 days.
- 5.3 The CMAR shall within 10 days, and before such conditions are disturbed, notify the DP and the Owner in writing of:
- 5.3.1 Subsurface or latent physical conditions encountered at the Site which differ materially from those indicated in the Contract Documents and which were not known by the CMAR or could not have been discovered by careful examination and investigation of the information provided or requested at the time of submission of the Guaranteed Maximum Price and which could adversely affect the Cost of the Work or the timely performance thereof; or
- 5.3.2 Unknown and unexpected physical conditions at the Site, of an unusual nature, differing from those ordinarily encountered or generally recognized as inherent in Work of the character provided for in the Contract Documents. The phrases "subsurface or latent physical conditions encountered at the Site" and "unknown and unexpected physical conditions at the Site" include among other matters Hazardous Substances (defined in Section 5.6.2 below) and archaeological conditions (described in Section 5.9 below) falling within Sections 5.3.1 and 5.3.2, respectively.
- 5.4 The DP and/or the Owner shall within ten (10) days after receipt of notice from CMAR, or such other reasonable time as necessary, investigate the conditions reported by CMAR. If the DP and/or the Owner find that conditions are so materially different as to support an equitable adjustment in the Guaranteed Maximum Price or the Contract Time(s), an equitable adjustment will be accomplished by written Contingency Use Authorization or Change Order. Adjustment of the Guaranteed Maximum Price will be for the actual, demonstrated direct cost impact to address the unforeseen condition. Extensions of Contract Time(s) will be considered only when based upon submission of an updated CPM schedule showing an actual unavoidable delay to the Project critical path resulting from the unforeseen condition. If the DP and/or the Owner determine that no Contingency Use Authorization or Change Order will be issued, the CMAR shall continue with the Work at no additional cost and under no change in Contract Time(s).
- 5.5 No claim by the CMAR for an increase in the Guaranteed Maximum Price or Contract Time(s) hereunder shall be allowed without proper advance notice and an adequate opportunity for the Owner to investigate.
- 5.6 Environmental Matters.
- 5.6.1 CMAR shall provide or cause to be provided a copy of this Section 5.6 to each Subcontractor participating in the Work.
- 5.6.2 Definitions. The following terms will have their respective designated meanings: "**Environmental Law**" means any and all laws, ordinances, regulations, rules and administrative and court decisions (federal, state and local) now or hereafter in effect and as amended from time to time pertaining to environmental conditions or to

protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. Section 2601, et seq.); the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. Section 11001 et seq.); the Clean Air Act (42 U.S.C. Section 7401, et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.); the Oil Pollution Act (33 U.S.C. Section 2701 et seq.); the Arizona Environmental Quality Act (Arizona Revised Statutes ("A.R.S.") Section 49-101, et seq.); the Arizona Underground Storage Tank Act (A.R.S. Section 49-1001, et seq.); the Arizona Water Quality Assurance Revolving Fund Act (A.R.S. Section 49-281, et seq.) and any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

"Hazardous Substance" means any of the following:

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

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

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

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

otherwise present on Owner's property at commencement of the Work, and (ii) that has become Hazardous Waste due to any part of the construction Work. However, Owner Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any CMAR Release.

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

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

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

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

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

5.6.3 General Requirements.

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

5.6.3.2 Hazardous Substances.

- (i) Hazardous Substances may be transported to and from and stored, used and be present on Owner's property in such quantities as are generally recognized to be usual and customary for performance of the Work.
- (ii) Hazardous Waste may be generated on Owner's property of such kinds and in such quantities, as are generally recognized to be usual and customary in connection with performance of the Work. Hazardous Waste so generated may be stored temporarily on Owner's property.
- (iii) Prior to Final Completion of the Work, CMAR shall remove or cause to be removed from Owner's property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (other than Project Hazardous Waste) brought onto Owner's property during the Work or used in connection with the Work.

- (iv) Other than as provided in (i), (ii) and (iii), CMAR shall not, and CMAR shall cause all Subcontractors to not, dispose of, generate, manufacture, process, produce, release, treat or otherwise store, use or have in or on or transport to or from Owner's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on Owner's property or otherwise.

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

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

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

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

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

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

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

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

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

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

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

5.6.5.5 PCBs. If polychlorinated biphenyl (PCB) containing ballasts, transformers and other electrical equipment are present in a Work area, these items must be

handled by CMAR and Subcontractors in the following manner. CMAR shall provide labor and materials for proper packaging of these waste items. The Owner's Representative must approve in advance the method of packaging.

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

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

5.7 Construction Site Safety Requirements.

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

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

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

5.9 Archaeological Conditions. If in the course of performing the construction Work, the CMAR, any Subcontractor or any of their employees or other persons performing any of the construction Work encounters any native American burial site or any archaeological artifacts, the CMAR shall immediately and before such burial site or artifacts are disturbed notify Owner's Representative and suspend any activity of the construction Work that might disturb the burial site or artifacts. The Owner will evaluate the situation and will decide what action, if

any, needs to be taken.

ARTICLE 6

INSURANCE AND BONDS

6.1 BOND REQUIREMENTS

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

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

6.2 **CMAR'S INSURANCE MUST BE IN PLACE:** The CMAR shall have in place the insurance coverages described in Sections 6.3.1, 6.3.2 and 6.3.3 and shall furnish satisfactory proof of insurance to Owner before commencing any of the construction phase Work. The CMAR shall not commence any construction phase Work until it has obtained ALL required bonds under Section 6.1 and insurance under Section 6.3 and has furnished satisfactory proof of insurance to the Owner. The CMAR shall not permit any Subcontractor to commence work on the Project until all insurance requirements have been complied with by the Subcontractor. If CMAR is a joint venture involving two (2) or more entities, then each independent entity shall satisfy the limits and coverages specified herein or the joint venture shall be a named insured under each policy.

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

6.3.1 **COMMERCIAL GENERAL LIABILITY** Commercial general liability insurance, with minimum limits of \$1,000,000 per occurrence, and unimpaired products and completed operations aggregate-limit and general aggregate minimum limit of \$2,000,000. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196, issued on an occurrence basis and endorsed to add the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC (Owner's Representative) as additional insureds with reference to this Agreement, and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC, their officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by CMAR. The policy shall include coverage for:

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

Minimum Required Insurance Limits Based on Total Construction Costs

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

6.3.2 **BUSINESS AUTOMOBILE LIABILITY** Business automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, with Insurance Service Office, Inc. declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC as additional insureds with reference to this Agreement and shall stipulate that the insurance shall be primary, and that any self- insurance or other insurance carried by the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC shall be excess and not contributory to the insurance provided by CMAR.

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

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

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

6.3.4 **BUILDER'S RISK INSURANCE** Builder's all risk insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Project and shall also insure finished products. Coverage shall also cover the interests of Owner and Subcontractors with respect to the Project, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the CMAR or Subcontractors in the performance of the Work, which will not become a part of the Work to be accepted by the Owner. The property insurance obtained under this paragraph shall ensure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition

occasioned by enforcement of any applicable Legal Requirement, and shall cover reasonable compensation for DP's and CMAR's services and expenses required as a result of such insured loss. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in the CMAR's application for payment and approved by the Owner. The CMAR shall be responsible for the deductible of each loss and shall retain responsibility, per the indemnity provisions of this agreement for any loss not covered by the builder's risk policy. This policy shall provide complete coverage for all work in the Project until Final Acceptance by the Owner.

- 6.3.5 PROPERTY INSURANCE All-risk property insurance coverage covering damages and/or destruction of any and all materials and equipment, which will become part of the Work until such materials or equipment are delivered to the Site of the Work.
- 6.4 COPIES OF POLICIES The Osborn School District shall be provided upon request certified copies of all policies and endorsements.
- 6.5 CERTIFICATES OF INSURANCE Certificates of Insurance acceptable to the State of Arizona, the Osborn School District Governing Board and Osborn School District shall be issued and delivered prior to commencement of the construction phase of the Work as specified in Section 6.2 and shall identify this Agreement and include certified copies of endorsements naming the Osborn School District Governing Board, Osborn School District and The H2 Group, LLC as additional insureds for liability coverages and as to liability coverages shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC their officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by CMAR. The certificates, insurance policies and endorsements required by this Article 6 shall contain a provision that coverages afforded will not be canceled until at least 60 days prior written notice has been given to Owner, the Osborn School District Governing Board and Osborn School District. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in the agreement and these General Conditions.
- 6.6 OWNER REMEDIES UPON BREACH OF ARTICLE 6 BY CMAR Failure on the part of CMAR to meet the requirements in this Article 6 shall constitute a material breach of this Agreement, upon which Owner may immediately terminate this Agreement and the Contract Documents or, in its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by CMAR upon demand, or the Owner may offset the cost of premiums against any monies due to the CMAR under this Agreement or otherwise.
- 6.7 COSTS NOT CHARGEABLE TO OWNER Costs of coverages broader than those required or for limits in excess of those required by this Article 6 shall not be a Cost of the Work and shall not be charged to the Owner.
- 6.8 WAIVER OF RIGHTS AGAINST THE OWNER, THE OSBORN SCHOOL DISTRICT GOVERNING BOARD, OSBORN SCHOOL DISTRICT AND THE H2 GROUP, LLC CMAR hereby waives and shall cause each Subcontractor and each of their respective insurers providing required coverages to waive their rights of recovery of any damages covered by insurance as provided herein against the Owner, the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC and their employees and independent contractors. Insurance policies procured pursuant hereto shall provide such waivers of subrogation by endorsement or otherwise.
- 6.9 AUTHORIZATION TO OBTAIN INFORMATION. The Owner may, and the CMAR hereby authorizes the Owner to, request and receive directly from insurance companies utilized by

the CMAR in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of the Owner.

- 6.10 CLAIMS REPORTING. Any failure to comply with the claims reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect Owner.
- 6.11 SELF-INSURANCE. The policies of CMAR specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. The CMAR shall be solely responsible for any deductible and/or self-insured retention, and Owner, at its option, may require the CMAR to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

ARTICLE 7

PAYMENT FOR CONSTRUCTION PHASE SERVICES

7.1 GUARANTEED MAXIMUM PRICE; SAVINGS.

- 7.1.1 The Owner shall pay the CMAR for the CMAR's performance of the Work pursuant to this Agreement, the Actual Cost of Work, up to but not exceeding the Guaranteed Maximum Price agreed to by Owner and CMAR in the final GMP as such GMP may be modified as provided in the Contract Documents. Any net savings after deduction of any offsets shall be calculated and promptly paid to Owner in a deductive Change Order after Final Completion of the entire Work.

7.2 SCHEDULE OF VALUES.

- 7.2.1 Before the commencement of the construction Work or a phase of the construction Work when the construction Work is to be done in phases, the CMAR shall submit to the Owner, and the parties shall agree upon, a complete Schedule of Values for the entire construction Work or the phase of the construction Work, as applicable, following the outline in Exhibit B, setting forth the various portions of the construction Work, and the portions of the Guaranteed Maximum Price allocated to each portion. The Schedule of Values shall be based upon the final Guaranteed Maximum Price. The Schedule of Values shall be used as a basis for payment as provided in Section 7.4.1. If there are any changes in the final Guaranteed Maximum Price, the Schedule of Values will be adjusted accordingly.

7.3 APPLICATIONS FOR PAYMENT.

- 7.3.1 The CMAR shall deliver to the DP and Owner on the last business Day of each month a sworn application for payment in the format specified by Owner covering the Cost of Work applicable to the Work performed during such month. In addition, with each application for payment CMAR shall submit such supporting documentation as is necessary or appropriate in the reasonable judgment of Owner to justify all amounts paid to the CMAR under prior applications for payment. Provided the properly submitted and accurate application for payment, an acceptable updated CPM construction schedule narrative report, per Section 2.4.16.5, and supporting documentation as requested by Owner or DP is received not later than the last day of the month, the Owner shall make payment to the CMAR not later than fourteen (14) days after the Owner receives a certificate for payment issued by the DP relating to the CMAR's application for payment.
- 7.3.2 The DP, within seven (7) days after receipt of the application for payment, will either issue a certificate for payment to the Owner for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

7.4 AMOUNT OF PROGRESS PAYMENTS.

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

7.5 RETAINAGE.

7.5.1 With respect to the CMAR's fee for the premiums for bonds and insurance, no retainage shall be withheld.

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

7.6 EARLY RELEASE OF SUBCONTRACTOR RETAINAGE.

7.6.1 If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the CMAR may request the Owner to disburse the retainage allocable to such Subcontractor, after delivering to Owner any necessary consent to such disbursement from such Subcontractor's surety, in a form satisfactory to the Owner. If the Owner is satisfied that the Subcontractor's work has been completed in accordance with the Contract Documents, the Owner may disburse said retainage to CMAR for payment to the Subcontractor, however, the two-year warranty period with respect to such work shall not commence until Substantial Completion of the entire Work.

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

- 7.7.1 Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may be similarly made for materials and equipment suitably stored off the Site, conditioned upon the CMAR furnishing evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment therefore and there are no claims of third parties; (b) the materials and equipment are adequately insured for full replacement value plus delivery with the Owner named as an additional insured on the insurance policy; and (c) such other matters as the Owner may reasonably request in order to protect its interests. The CMAR's requirements for insurance coverage in Section 6.3.4 and 6.3.5 shall remain for the duration of the work until Final Acceptance by the Owner. Payment for materials and equipment stored off site is not preferred and may only occur if a demonstratable hardship is realized by the CMAR. No materials and equipment stored off the site shall be paid for without Owner approval.

7.8 TITLE TO CONSTRUCTION WORK.

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

7.9 WITHHOLDING OF PAYMENT.

- 7.9.1 The Owner may withhold payment from any application for payment to the extent necessary to protect the Owner from loss because of:
- 7.9.1.1 Unsatisfactory job progress as determined by the Owner.
 - 7.9.1.2 Disputed Work or materials.
 - 7.9.1.3 Defective Work not remedied.
 - 7.9.1.4 Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors, materialmen, suppliers, or others.
 - 7.9.1.5 Failure of the CMAR to make payment to Subcontractors or suppliers within seven (7) days after receipt of each progress payment.
 - 7.9.1.6 The CMAR's failure to perform any of its contractual obligations under the Contract Documents or any other agreement with the Owner.
 - 7.9.1.7 Deficiencies or claims asserted by Owner against CMAR arising from any other project.
 - 7.9.1.8 Damage to the Owner or a separate contractor caused by the fault or neglect of the CMAR or any Subcontractor to the extent not covered by insurance;
 - 7.9.1.9 Reasonable evidence that the entire Work or a phase of the Work if the Work is being done in phases will not be Substantially Complete within the Contract Time(s) due to delay for which the Contractor is responsible, or that the unpaid balance of the Guaranteed Maximum Price would not be adequate to cover liquidated damages for any anticipated unexcused delay;

reasonable evidence that the unpaid balance of the Guaranteed Maximum Price for the entire Work will not be sufficient to complete the entire Work or the phase of the Work, as applicable; or

7.9.1.10 Any other reason which in Owner's judgment disqualifies CMAR from receiving the full amount of the application for payment.

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

7.10 FAILURE OF PAYMENT

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

7.11 SUBSTANTIAL COMPLETION.

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

7.12 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

- 7.12.2.2 written notice has been given to the Owner;
 - 7.12.2.2 Consent of Surety to the final payment;
 - 7.12.2.3 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents;
 - 7.12.2.4 Unconditional waivers of lien from all Subcontractors, materialmen, suppliers, or other persons or entities having provided labor, materials and equipment relating to the entire Work;
 - 7.12.2.5 Approval by DP as being accurate and complete of the as-built drawings submitted by CMAR under Section 2.4.15.1; and
 - 7.12.2.6 All supporting documentation justifying Actual Costs of the Work paid or to be paid by Owner required to be delivered by CMAR to Owner under this Agreement.
- 7.12.3 If, after Substantial Completion of the entire Work, Final Completion thereof is materially delayed through no fault of the CMAR or by the issuance of additional Change Directives by the Owner, the Owner may at its sole discretion, upon request of the CMAR, and without terminating this Agreement, make payment of the balance due for that portion of the Work fully and properly completed. If the remaining balance for Work not fully and properly completed is less than the applicable retainage, and if bonds have been furnished, the written Consent of Surety to payment of the balance for that portion of the Work fully and properly completed shall be submitted by the CMAR to the Owner, and such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the CMAR or the Owner.
- 7.12.4. Acceptance of final payment by the CMAR shall constitute a waiver of affirmative claims by the CMAR. The making of the final payment by the Owner shall constitute a waiver of claims by the Owner, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents and other rights provided under Arizona law.

7.13 ALLOWANCES.

- 7.13.1 The Guaranteed Maximum Price shall include all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the CMAR shall not be required to employ persons or entities against which the CMAR makes reasonable objection. Unless otherwise provided in the Contract Documents:
- 7.13.1.1 Materials and equipment under an allowance shall be selected by the Owner within a reasonable time frame as defined in the Owner approved Project schedule.
 - 7.13.1.2 Allowances shall cover the cost to the CMAR of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
 - 7.13.1.3 Allowances shall not include professional or construction fees.
 - 7.13.1.4 Allowances shall cover general conditions, bond and insurance premiums;
 - 7.13.1.5 Allowances shall cover CMAR's costs for unloading and handling at the Site, labor, installation costs and other expenses;
 - 7.13.1.6 Any unused Allowance amounts shall be returned to the Owner using a Deductive Change Order.

7.14 CONTINGENCY.

- 7.14.1 Contingency is used without the necessity of a Change Order and without a change to the GMP. Contingency may only be used for Work after execution of a Contingency Use Authorization which provides the Owner's written approval. The Contingency included in the GMP is not allocated to a particular item of the Cost of the Project and is established for costs incurred in the Work from unforeseen conditions or details which could have not been anticipated by the CMAR at the time of the Owner's approval of the GMP. All use of the Contingency must be approved in writing by the Owner. The Contingency Amount included in the GMP includes all taxes, general conditions, bond and insurance premiums, General Contractor (5%) mark-up and Subcontractor (10%) mark-up for each approved Contingency Use Allocation. Unused Contingency amounts shall be returned to the Owner using a Deductive Change Order and shall include appropriate amounts for all indirect costs noted above.

7.15 PROJECTS DONE IN PHASES: ALLOCATION OF GMP

- 7.15.1 When the construction Work is to be done in phases, the CMAR will submit a proposed allocation of the GMP to the Owner. The Owner will promptly review the proposed allocation. If the Owner does not agree with the proposed allocation, CMAR and Owner shall use their good faith best efforts to agree on the allocation. If an agreement is not reached, the Owner shall make a reasonable final determination on the allocation.

ARTICLE 8 **INDEMNIFICATION**

8.1 PROPRIETARY RIGHTS, PATENT AND COPYRIGHT INFRINGEMENT

- 8.1.1 If elected by Owner, CMAR shall defend any action or proceeding brought against Owner, the Osborn School District Governing Board, the Osborn School District, The H2 Group, LLC and their consultants, agents and employees based on any claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any proprietary rights, United States patent or copyright, now or hereafter issued. Owner agrees to give prompt notice in writing to CMAR of any such action or proceeding and to provide authority, information and assistance in the defense of it. Regardless of whether or not Owner elects to have CMAR undertake the defense, CMAR shall indemnify and hold harmless Owner, the Osborn School District Governing Board, Osborn School District, and The H2 Group, LLC from and against all damages, liabilities, judgments, costs and expenses, including attorney's fees and litigation expenses, incurred by or awarded against Owner, the Osborn School District Governing Board, Osborn School District, The H2 Group, LLC in any such action or proceeding. CMAR further agrees to keep Owner reasonably informed of all developments in the defense of such actions.
- 8.1.2 If Owner is enjoined from the operation or use of the Work or any part thereof in connection with any proprietary rights, patent suit, claim, or proceeding, CMAR shall at its sole expense take reasonable steps to procure the right to operate or use the Work or part. If CMAR cannot so procure the aforesaid right within a reasonable time, CMAR shall then, promptly, at CMAR's option and at CMAR's sole expense (i) modify the Work so to avoid infringement of any patents, copyrights or other proprietary rights; or (ii) replace said Work with Work that does not infringe or violate any such proprietary rights, patent or copyright.

- 8.1.3 Sections 8.1.1 and 8.1.2 above shall not be applicable to any action or proceeding based on infringement or violation of a proprietary rights patent or copyright (i) relating solely to a particular process or the product of a particular manufacturer specified by Owner and such processes or products which are something other than that which has been offered or recommended by CMAR to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.
- 8.1.4 The obligations set forth in these "Proprietary Rights, Patent and Copyright Indemnification" provisions shall constitute the sole agreement between the parties relating to liability for infringement or violation of any proprietary rights, patent or copyright.
- 8.1.5 This Section 8.1 shall continue in effect indefinitely and shall not terminate upon completion and acceptance of the Work or upon termination or expiration of this Agreement.

8.2 GENERAL INDEMNITY

- 8.2.1 CMAR shall indemnify, hold harmless and defend Owner, the Osborn School District Governing Board, the Osborn School District, The H2 Group, LLC and their consultants, agents and employees from and against any and all claims, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of Contractor, any Subcontractor or any of their officers, employees, agents or independent contractors relating to the Work. This indemnity shall not be construed to include claims, demands, losses, damages, costs and expenses to the extent arising from the negligent acts or omissions of the Owner or its officers, employees, agents and independent contractors (other than CMAR and its officers, employees, agents and independent contractors). This indemnity includes, but is not limited to, (I) personal injury, sickness or death of persons and property damage and (II) matters described or referred to in Section 5.8 of these General Conditions.

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

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

ARTICLE 9 TIME

- 9.1.1 Both the CMAR and Owner recognize that any time limits set forth in the Contract Documents are of the essence of this Agreement. CMAR agrees that it will timely commence performance of the Work, achieve Substantial Completion and Final Completion of the entire Work and achieve any interim milestones for Substantial Completion and Final Completion as required by the Contract Documents. In addition, if the Work is done in phases or if the Owner has agreed to separately accept a portion of the Work, CMAR agrees to achieve Substantial Completion and Final Completion of each phase and portion by the dates agreed by Owner and CMAR.

- 9.1.2 It is agreed that time is of the essence of each and every portion of this Agreement and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Where, under this Agreement additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Agreement. Failure to achieve any date or time for achievement of Substantial Completion or Final Completion of the entire Work, any phase of the Work if the Work is done in phases or any portion of the Work that the Owner has agreed to accept will result in the assessment of Liquidated Damages, as provided by this Agreement. The liquidated damage amount shall be paid for each and every calendar day that the CMAR shall be in default after the time stipulated in this Agreement for Substantial Completion or Final Completion of the entire Work or a phase or portion of the Work. The amount is fixed and agreed upon by and between the CMAR and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. Said sums may be withheld by the Owner from any amounts due to the CMAR from the Owner, whether as the result of this Agreement or any other obligation between the Owner and the CMAR.
- 9.1.3 CMAR may be entitled to an appropriate adjustment of its Guaranteed Maximum Price for extended construction general conditions only for delays directly caused by the actions or inactions solely of the Owner.
- 9.1.4 Notice of any delay in the Work shall be made in writing by the CMAR to the DP and Owner immediately but in no event later than forty-eight (48) hours after discovery of the event giving rise to the delay. The CMAR shall provide additional details concerning cause(s) of the delay in writing to the DP and the Owner within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall constitute a waiver of and absolutely bar any and all later claims for additional days or time. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the CMAR must give written notice every month at the same time it submits the updated progress narrative report to the DP. Within fifteen (15) days after the elimination of any such delay, the CMAR shall submit further documentation concerning the delay and, if applicable, a formal written request covering an extension of the Contract Time(s) for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the progress schedule, including a "fragnet" and any other data demonstrating a delay in the critical path of the entire Work, the phase of the Work if the Work is done in phases or the portion of the Work if the Owner has agreed to separately accept a portion of the Work or individual milestone or the overall Project completion. If the CMAR does not comply with the notice and documentation requirements set forth above, the claim for delay is waived and absolutely barred.

ARTICLE 10

CHANGES TO THE CONTRACT PRICE AND TIME

10.1 CHANGE ORDER

- 10.1.1 After this Agreement is signed, modifications to this Agreement may only be made by a written modification of this Agreement executed by Owner and CMAR or by a written Change Order executed by Owner and CMAR, provided that any changes in the Contract Time(s), any changes in the scope of the Work may only be made by a written Change Order executed by Owner and CMAR.

10.1.2 By written Change Directive (defined below) at any time, the Owner, may make any changes within the general scope of this Agreement, issue additional instructions, require additional or modified Work or direct deletion of Work. The CMAR shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the Owner and shall proceed in accordance with the procedures set forth in this Section 10.1.2. The Owner's right to make changes shall not invalidate this Agreement or relieve the CMAR of any liability. Any requirement of notice to the surety shall be the responsibility of the CMAR. If the CMAR proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this Article 10, the CMAR hereby waives all rights or claims CMAR may have as a result of the change.

10.1.3 **"Change Order"** means a written instrument issued after execution of this Agreement signed by DP, Owner and CMAR, stating their agreement upon all of the following:

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

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

10.2 CHANGE DIRECTIVES

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

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

10.3 MINOR CHANGES IN THE WORK

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

10.4 PRICE, TIME, OR SCOPE OF WORK ADJUSTMENT

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

- 10.4.1.1 By unit prices stated in the Contract Documents.

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

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

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

10.4.2 Any dispute regarding the pricing methodology or cost of a change shall not relieve the CMAR from proceeding with the change as directed by the Owner. The cost or credit to the Owner shall be determined by the Owner or its representatives on the basis of Section 10.4.1.

10.4.3 An Owner-approved written Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the CMAR for inclusion in the Change Order is irrevocably waived.

10.4.4 If Owner and the CMAR disagree upon whether CMAR is entitled to be paid for any services required by Owner, or in the event of any other disagreements over the scope of Work or proposed changes to the Work, or Contract Time(s), Owner and CMAR agree to resolve the disagreement consistent with Articles 10 and 11 of these General Conditions. As part of the negotiation process, CMAR shall furnish Owner and DP with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree, and Owner requests

CMAR to perform the services in accordance with Owner's or DP's interpretations of the Contract Documents, CMAR shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to CMAR directing CMAR to proceed and specifying Owner's or DP's interpretation of the services that are to be performed and the Owner shall pay 50% of the disputed costs. The dispute shall be resolved in accordance with Article 11 and reimbursement and/or payment between the parties shall be adjusted accordingly.

- 10.4.5 The cost or credit to the Owner resulting from a change in the Work which requires a Contingency Use Authorization (no increase to the GMP) shall be completed in accordance with Section 7.14 of these General Conditions.

10.5 EMERGENCIES

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

ARTICLE 11

REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

11.1 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND RELIEF.

- 11.1.1 All of CMAR's claims and disputes shall first be referred to the Owner Representative for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the CMAR knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The Owner shall review the claim or dispute with the DP and respond to the CMAR within a reasonable time. Any disagreements with the Owner's response must be timely submitted and resolution attempted through the partnering procedures established pursuant to Section 2.1.4, if Owner has elected to have partnering procedures for the Project. If attempts at resolution through the partnering procedures are exhausted and fail or if there are no partnering procedures for the Project, the Owner's response may be reviewed in accordance with Arizona Administrative Code R7-2-1155 as amended or superseded, which shall be the parties' sole remedy. Any claim not timely filed or not complete at the time of filing, is irrevocably waived.
- 11.1.2 If either CMAR or Owner believe that the Contract Documents afford contractual rights or relief from events arising during performance of the Work, including Change Orders, adjustments and relief for the acts or omissions of the other party, or any other party under the control of the other party, for injury or damage to persons or property, or for events which affect the Guaranteed Maximum Price or Contract Time(s), or both, the party requesting the adjustment or relief shall provide the other party written notice of its request, if possible, prior to incurring any loss, cost or expense, but in no event later than the times, if any, required by the specific provision(s) of the Contract Documents, which form the basis of the party's request. In the absence of said times, such request shall, if possible, be made prior to incurring any loss, cost, or expense, but in no event later than seven (7) calendar days after (i) the occurrence of the event or circumstance giving rise to the request; or (ii) the party reasonably should have recognized the event or condition giving rise to the request, whichever time is sooner. Such request shall be in writing and include sufficient information to advise the other party of the circumstances or events giving rise to the request, the specific contractual adjustment or relief requested, and the basis of such request. Any relief or adjustment

afforded any party shall be set forth in a written Change Order in accordance with Article 10. Failure to timely request relief under this Section 11.1.2 waives any right or entitlement to that or any other relief under this paragraph.

11.2 DISPUTE AVOIDANCE AND RESOLUTION

11.2.1 The parties are fully committed to working with each other throughout the Project, and agree to communicate regularly with each other at all times, including weekly on-site design and construction status meetings and, if partnering is elected by the Owner under Section 2.1.4, using the partnering procedures established by Owner, DP and CMAR, so as to avoid or minimize disputes or disagreements. CMAR's Representative along with the DP and CMAR's Construction Superintendent shall attend weekly status meetings with the Owner's Representative. The CMAR shall take minutes outlining the issues discussed, action responsibility, due dates and resolution and distribute them within three (3) days of each meeting. To the extent disputes or disagreements arise during the Project, both CMAR and Owner commit to resolving such disputes in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. In the first instance, CMAR and Owner will attempt to resolve disputes and disagreements at the field level through discussions between CMAR's Representative and Owner's Representative.

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

11.3 JUDICIAL PROCESS

11.3.1 CMAR, DP, and Owner agree that all other parties involved in any claim, controversy, dispute or disagreement relating to the Work may be made parties to any process, proceeding, or litigation, and to this end, CMAR, DP, and Owner will include appropriate provisions in all contracts they execute with other parties in connection with this Project requiring attendance and participation in any such process, proceeding, or litigation. CMAR, DP, and Owner expressly agree that any dispute resolution proceeding initiated pursuant to this Agreement may be joined or consolidated with any dispute resolution proceeding involving any other person or entity (i) necessary to resolve the claim, dispute, or controversy, or (ii) substantially involved in or affected by such claim, dispute, or controversy. Both DP and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

11.3.2 Subject to other provisions in the Contract Documents, unless otherwise agreed by Owner in writing at the time, the CMAR shall carry on the Work and maintain its progress during any claims and controversy proceedings or dispute and disagreement process, and the Owner shall continue to make payments to the CMAR in accordance with the Contract Documents of amounts that are not subject to the claim, controversy,

dispute, or disagreement and the Owner shall pay 50% of the disputed cost pending resolution in accordance with this Article.

11.4 CONSEQUENTIAL DAMAGES

NOT WITHSTANDING ANYTHING HEREIN, TO THE CONTRARY, THE CMAR SHALL WAIVE ANY RECOVERY OF CONSEQUENTIAL LOSSES OR DAMAGES FROM THE OWNER, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO USE AND LOSS OF PROFITS. THE OWNER, NOT WITHSTANDING ARTICLE 6 OF THE MASTER GENERAL CONDITIONS OR THE LIQUIDATED DAMAGES CLAUSE 5.6 OF THE AGREEMENT BETWEEN OWNER AND CMAR OR ANYTHING ELSE HEREIN, SHALL WAIVE RECOVERY OF CONSEQUENTIAL DAMAGES FROM THE CMAR ARISING FROM EXECUTION OR BREACH OF THIS CONTRACT.

ARTICLE 12

STOP WORK AND TERMINATION

12.1 OWNER'S RIGHT TO STOP WORK

- 12.1.1 Owner may, without cause and for its convenience, order CMAR in writing to stop or suspend its Work or terminate this Agreement or both.
- 12.1.2 CMAR may seek an adjustment of the Guaranteed Maximum Price or Contract Time(s) or both under Article 10 of these General Conditions to the extent that its Work has been adversely impacted by any suspension or stoppage of the Work by Owner, unless actions or inactions of the CMAR or a Subcontractor are the cause of the Owner stopping the Work.
- 12.1.3 If Owner terminates this Agreement due to inability to keep the Work within the Guaranteed Maximum Price or the Contract Time(s), the Owner will provide thirty (30) days written notice to CMAR and pay for all documented acceptable costs incurred by CMAR to the termination date.

12.2 OWNER'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE

- 12.2.1 If CMAR persistently fails to (i) provide a sufficient number of skilled workers; or the materials required by the Construction Documents or both; (ii) comply with applicable Legal Requirements; (iii) timely pay, without cause, its Subcontractors; (iii) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s) as may be adjusted as provided in this Agreement; or (v) otherwise perform the Work and its obligations consistent with the Contract Documents, Owner shall have the right, in addition to any other rights and remedies provided in the Contract Documents or by law, after seven (7) days written notice to CMAR and CMAR's failure to commence to cure, diligently pursue the cure and completely cure the default within a reasonable time, to (i) perform and furnish through itself or through others any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to CMAR under the Contract Documents; or (ii) terminate the employment of CMAR for all or any portion of the Work, enter upon the Site and take possession, for the purpose of completing the Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which CMAR hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. In the event of such termination, CMAR shall be entitled to be paid only for all Work properly performed prior to its default and only if adequate funds are available as set

forth herein. If the Owner's cost and expense of completing CMAR's Work shall exceed the Guaranteed Maximum Price, then CMAR or its surety shall pay the difference to Owner. Such costs and expense shall include, not only the cost of completing the Work to the satisfaction of Owner and of performing and furnishing all labor, materials, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expense, including attorney's fees and expenses incurred in connection with the re-procurement and defending claims arising from CMAR's default.

12.2.2 The parties agree that if the Owner terminates this Agreement for cause and such termination is finally determined to be improper, the termination for cause will be converted to a termination for convenience and the provisions of Article 11 shall apply.

12.2.3 The parties agree that if CMAR institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate CMAR's performance of its obligations under the Contract Documents. Accordingly, should such event occur, Owner shall be entitled to request CMAR, its trustee or other successor, to provide adequate assurance of future performance. If CMAR fails to comply with such request within ten (10) days after receiving notice of the request, Owner, in addition to any other rights and remedies provided by the Contract Documents or by law, shall be entitled to terminate this Agreement. Owner shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s), and to deduct the costs incurred from any monies due or to become due CMAR under the Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of such bankruptcy proceedings, the Contract Documents shall terminate if CMAR rejects this agreement or if there has been a default under the Contract Documents, and CMAR is unable to give adequate assurances that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3 CMAR'S RIGHT TO STOP WORK AND TERMINATE FOR CAUSE

12.3.1 CMAR may, in addition to any other rights afforded under the Contract Documents or by law, either stop work or terminate this Agreement for cause upon Owners failure to pay an amount in excess of \$100,000 dollars properly due and not in dispute under CMAR's application for payment, provided that before taking any such action CMAR has given Owner the written notice specified in Section 12.3.2 and the Owner has not cured within the specified seven (7) day period.

12.3.2 Should the events set forth in Section 12.3.1 occur, CMAR shall provide Owner with written notice indicating that such condition set forth in Section 12.3.1 has occurred, and it is CMAR's intention to stop work or terminate this Agreement if said event is not cured within seven (7) days from Owner's receipt of CMAR's notice. If CMAR elects to stop work, it may later indicate its intention to terminate this Agreement by providing Owner with written notice that CMAR will terminate this Agreement within seven (7) days from receipt of CMAR's notice, unless the alleged cause of termination is cured.

12.3.3 If CMAR elects to stop Work under Section 12.3.1, CMAR shall be entitled to make a claim for adjustment to the GMP and Contract Time(s) to the extent it has been adversely impacted by the stoppage of the Work. If CMAR elects to terminate this Agreement for reasons permitted under Sections 12.3.1 and 12.3.2, CMAR shall be entitled to recover the same costs it would be permitted to recover had Owner terminated this Agreement for its convenience under Section 12.1.

- 12.4 If the Contract is terminated for any reason, at the election of Owner which Owner may exercise as to each Subcontractor agreement individually, CMAR's agreements with its Subcontractors shall, at Owner's option and without further action by CMAR, be assigned to Owner; provided, however, that Owner shall have no liability for any pre-existing acts, omissions or defaults by CMAR under such agreements and as to such matters the sole recourse of Subcontractors shall be against CMAR.

ARTICLE 13
MISCELLANEOUS

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

which date if no funds are legally available, this Agreement may be terminated by Owner at its option.

- 13.8.2 Funding for this Project is contingent upon the District issuing general obligation school improvement bonds in an amount sufficient, after all other purposes, to provide the funds necessary to design and construct the Project. If within 24 months of the date hereof the District has not issued bonds and identified from the proceeds thereof an amount sufficient for this purpose, this Agreement shall be terminated and of no force or effect and the CMAR will not be entitled to compensation under or with respect to this Agreement whether for preparation and execution of this contract and related documents, the cost of insurance or payment and performance bonds, lost profits, detrimental reliance, or for any other reason.

13.9 CONFLICT OF INTEREST.

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

13.10 NONDISCRIMINATION.

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

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

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

- 13.12 DISPUTES. Any failure of the DP's or the Owner to make a decision within the time limit set

forth shall not be construed as acquiescence in all or any part of the CMAR's claim for relief.

- 13.13 **SEXUAL HARASSMENT.** The CMAR shall comply with the Owner's current policy regarding sexual harassment. The Owner prohibits sexual harassment by any person on Owner's premises or at any Owner-affiliated functions.
- 13.14 **AMENDMENTS.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.
- 13.15 **CONDUCT.** The CMAR agrees that no employee, or any subcontractor employee, is permitted to interact or in any way fraternize with any students or campus personnel at any time, unless necessary for construction related purposes or safety. No CMAR employee, or subcontractor employee is allowed to use any schools' facilities including bathrooms and interior areas of the buildings for breaks. Smoking is prohibited at all times while on school property. These requirements are part of the responsibilities of the CMAR's full time on-site supervision of the project. Any violation of the requirements of this Section 13.15 shall result in immediate removal of the CMAR's or subcontractor's employee from the Project.
- 13.16 **QUALIFICATIONS FOR EMPLOYMENT.** No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any Work under this Agreement. Each person working must provide proof of United States citizenship or legal work identification.
- 13.17 **DRUG-FREE WORKPLACE.** CM@R shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act. CMAR shall not permit the use of alcohol or controlled substances at the Site.

CMAR:

ENTER NAME

OWNER:

**OSBORN SCHOOL DISTRICT
GOVERNING BOARD
For and on behalf
OSBORN SCHOOL DISTRICT #8**

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date:

Date:

EXHIBIT A

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

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

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

KNOW ALL MEN BY THESE PRESENTS:

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

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

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

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

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

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

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

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

Principal _____ Seal _____

By _____

Surety _____ Seal _____

By _____

SCHEDULE OF VALUES/COST OF WORK GENERIC FORMAT EXHIBIT

EXHIBIT B

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

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

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

Cost Code	Item of Work	GMP Value	Buy-Out Value	Line Item Adjustment
DIV 14	CONVEYING SYSTEMS			
04-0110 SUB	Elevators			
DIV 14	SUB-TOTAL			
DIV 15	MECHANICAL			
15-0110 SUB	Plumbing			
15-0810 SUB	Fire Protection			
15-1510 SUB	HVAC System			
DIV 15	SUB-TOTAL			
DIV 16	ELECTRICAL			
16-0110 SUB	Electrical			
DIV 16	SUB-TOTAL			
DIV 17	ALLOWANCES			
17-0100 SUB	Itemize Allowances (such as Controls)			
DIV 17	SUB-TOTAL			
	SUBTOTAL COST OF WORK (BEFORE CONSTRUCTION PHASE SERVICES FEE)			
18-0001 GEN	Indirect Costs (itemize separately)			
19-0001 GEN	Project Contingency			
20-0000 GEN	Construction Phase Services Fee (Dollar Amount)			
	2%			
	TOTAL CONSTRUCTION COSTS			

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

for

**INSTRUCTIONAL LEARNING SPACES
UPDATES AND CONFIGURATIONS**

between

Osborn School District No. 8

and

ENTER CMAR NAME

EXHIBIT C – GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price is not to exceed:

- **\$X,XXX,XXX**

ENTER CMAR NAME has prepared and the Osborn School District Governing Board has approved the GMP amount of **\$X,XXX,XXX** for the construction of the scope of work described within Exhibit D, Scope of Work and further described by the Contract Documents listed in Exhibit F, Contract Documents List.

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

for

**INSTRUCTIONAL LEARNING SPACES
UPDATES AND CONFIGURATIONS**

between

Osborn School District No. 8

and

ENTER CMAR NAME

EXHIBIT D – SCOPE OF WORK

The Project Scope of Work shall be performed in accordance with all provisions included in this Agreement for Construction Phase Services (including all Exhibits). The Scope of Work for this project includes providing construction phase services (CMAR) for:

- **ENTER PROJECT SCOPE OF WORK**

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

for

**INSTRUCTIONAL LEARNING SPACES
UPDATES AND CONFIGURATIONS**

between

Osborn School District No. 8

and

ENTER CMAR NAME

EXHIBIT E – MASTER CONSTRUCTION SCHEDULE

The Master Construction Schedule (attached) for the Instructional Learning Spaces Updates and Configurations has been prepared by **ENTER CMAR NAME** and accepted by the Osborn School District.

The milestone dates are:

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

The CMAR’s detailed Construction Phase schedule follows.

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

**for
INSTRUCTIONAL LEARNING SPACES
UPDATES AND CONFIGURATIONS**

between

Osborn School District No. 8

and

ENTER CMAR NAME

EXHIBIT F – CONTRACT DOCUMENTS LIST

The Contract Documents which comprise the Agreement between Osborn School District and **ENTER CMAR NAME** concerning the Work consist of the following:

- The Construction Services Agreement (pages 1 to 10, inclusive).
- General Conditions (pages 1 to 59, inclusive).
- Supplementary Conditions (if applicable).
- The Construction Drawings (regulatory approved set dated **XXX XX, 20XX**).
- The Project Manual (Specifications dated **XXX XX, 20XX**).
- Addenda consisting of Numbers to , inclusive.
- Performance Bond and Payment Bond.
- The Owner accepted Construction Schedule (CPM dated **XXX XX, 20XX**).
- Notice to Proceed (dated **XXX XX, 20XX**).
- CMAR's Guaranteed Maximum Price (attached after Exhibit C).
- The Pre-Construction Services Agreement (pages 1 to 28, inclusive).
- *List other applicable documents such as Subcontractors List, Unit Price Schedules, Other Contract Documents.*