PRO-FORMA
EXHIBT A TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK
GENERAL CONDITIONS

DATE ISSUED:

ASU PROJECT NO:

ASU PROJECT NAME:

OWNER
ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY

CMAR

DESIGN PROFESSIONAL

• CONSTRUCTION MANAGER AT RISK (CMAR) •
GENERAL CONDITIONS ©
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- Exhibit A – Performance and Payment Bond Form
- Exhibit B – Form of GMP Setting Modification
- Exhibit C – Sample Form of GMP Cost Schedule (CSI Format)
- Exhibit D - CMAR’s Pre-construction Phase Scope of Services
- Exhibit E – Subcontracting Report

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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 Design Professional 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 “Contract Documents” are those documents noted under Article 2 of Agreement Between Owner and Construction Manager at Risk, as they may be amended, modified, extended and renewed from time to time.

As used in the Contract Documents, the phrase, “this Agreement”, means the agreement between Owner and CMAR in the Contract Documents.

1.2.2 “Construction Documents” are the plans and specifications to be used to construct the Project. They are the Design Submission Documents that are (I) prepared by the Design Professional, (ii) approved by the Owner, (iii) reviewed by the CMAR as provided in Section 2.2.4.8, (iv) adjusted to the extent, if any, provided in Section 2.2.4.8, and (v) actually included in the bid packages for Subcontractors as provided in Section 2.2.4.8. Upon completion of these steps, these Design Submission Documents are hereby incorporated by reference into the Contract Documents and this Agreement. All amendments and modifications to the Construction Documents must be approved by the Owner in writing.

1.2.3 “Cost of the Work” consists of those items of the entire Work, which are paid for by the Owner to the CMAR and consists of the Preconstruction Phase Services Fee and the Construction Costs. “Construction Costs” are the costs of the construction Work. “Actual Cost of the Work” is the aggregate amount of costs for the construction Work in those categories of costs set forth in the GMP Schedule (defined in Section 2.2.2) chargeable to the Owner under the provisions of the Contract Documents, provided that the Actual Cost of the Work to be paid by Owner shall not exceed the Guaranteed Maximum Price set forth in the GMP Setting Modification under Section 2.2.2, as such GMP may be modified in accordance with the Contract Documents.

1.2.4 “Open Book Cost” is the Actual Cost of the Work as compiled and recorded in accordance with the provisions of Subsection 2.1.13 of these General Conditions.

1.2.5 “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 (Month Day, Year), with amendments, and any substitutes permitted under the terms of the RFQ and these General Conditions and the Agreement Between Owner and Construction Manager at Risk. The participates in the preconstruction phase by reviewing and evaluating costs, constructability, schedule, and implications of alternate designs and systems and materials and by doing value engineering during and after design of the Project. During construction phase, the assumes all risk for price and schedule under the GMP Setting Modification under Section 2.2.2.

1.2.6 “Day” and “Days” mean calendar days, unless specifically provided otherwise. If a specific day or a period is provided for an action and the specific day or the last day of the period falls on a Saturday, a Sunday or a Federal, State of Arizona, or Owner holiday or other day on which Owner is not open for business, the day shall be the next following day that is not a Saturday, Sunday or Federal, State of Arizona, or Owner holiday or other day on which Owner is not open for business.
1.2.7 “Design Professional” is a representative of the Owner as provided in the Contract Documents, whose agreement is with the Owner and who is a qualified professional properly licensed in the State of Arizona to furnish design and construction administration services.

1.2.8 “Bidding Contingency” will have the meaning specified in Section 2.2.2.

1.2.9 “Construction Contingency” will have the meaning specified in Section 2.2.2.

1.2.10 “GMP Setting Drawings, Specifications, Assumptions and Clarifications” will have the meaning specified in Section 2.2.2.

1.2.11 “Guaranteed Maximum Price” or “GMP” is the amount that the CMAR guarantees (the sum of the cost of the construction Work, Bidding Contingency, Construction Contingency, and the CMAR’s construction phase fee for all items as set forth in the GMP Schedule) to be the maximum amount due the CMAR for performance of all of the construction Work, as modified from time to time by Change Orders and as otherwise modified from time to time as provided in the Contract Documents. All costs for performing the Work, which exceed the GMP and are not authorized by Change Order, are to be paid by the CMAR and not the Owner. The procedure for setting the GMP is in Section 2.2.2.

1.2.12 “Legal Requirements” include all regulations, policies and practices of the Arizona Board of Regents and all applicable rules, laws, codes, ordinances and regulations of any governmental or quasi-governmental entity, federal, state and local having jurisdiction over the Work, the practices involved in the Work, or any work performed.

1.2.13 “Project Budget” is the total cost to the Owner for the Project, including all sums to be paid to or for the Design Professional, the Work, other consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, and other incidentals required to achieve final completion of the Project.

1.2.14 “Project Criteria” are developed by or for Owner to describe Owner’s program, requirements and objectives for the Project, including use, space, price, time, site, utility, parking, and expandability requirements, as well as submittal requirements and other requirements affecting CMAR’s performance of the Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by or for Owner.

1.2.15 “Punch List” are those minor items of Work identified and listed by Design Professional and agreed to by Owner 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.

1.2.16 “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 Section 7.1. Savings is determined based on the GMP as in effect on the date of Final Completion of the entire Work.

1.2.17 “Site” is the land and other areas on which the Project is located.

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

1.2.19 “Substantial Completion” is the date on which the construction Work, or an agreed portion of the construction Work, is sufficiently complete, as determined by the Design Professional’s issuance of
a Certificate of Substantial Completion, so that Owner can fully occupy and utilize the Project, or an
agreed upon portion thereof, for the purposes for which it is intended. Upon Substantial Completion,
all Work must be complete except for Punch List items.

1.2.18 “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 List work, all record and close-out
documents specified in Owner’s Project specifications and Owner training/start up activities.

1.2.19 “Work” is all activities by the CMAR required by the Contract Documents, including, without
limitation, activities during the pre-construction 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 or from prevailing trade usage and custom.

1.2.20 “Work Package” is a segment of the construction Work. This term is operative in the Contract
Documents only if the Owner has determined to divide the construction Work into Work Packages
as provided in Section 5.7 of the Agreement Between Owner and Construction Manager at Risk.
The number of Work Packages, the contents of each Work Package and other matters relating to
Work Packages are determined in accordance with that Section 5.7.

1.2.21 “Change Order” has the meaning specified in Section 10.1.3.

1.2.22 “Change Directive” has the meaning specified in Section 10.2.1.

1.3 MUTUAL UNDERSTANDING
Owner and CMAR agree that these provisions set forth their mutual understanding and agreement regarding
the conditions or subjects addressed herein.

1.3.1 It is understood and agreed that Owner has hired or will hire a Design Professional to design the
Project.

1.3.2 CMAR understands and agrees that the design for the Project is not complete at the time this
Agreement is executed and may or may not have commenced.

1.3.3 CMAR commits to cooperate with and assist the Design Professional in producing a completed
design for the Project that is acceptable to the Owner, all as more fully described elsewhere in the
Contract Documents.

1.3.4 As the Design Submission Documents are completed and accepted by the Owner, they shall
become part of the Contract Documents as though they were specifically set forth therein at the
time of execution of this Agreement.

ARTICLE 2
CMAR’S SERVICES AND RESPONSIBILITIES

2.1 GENERAL MATTERS AS TO CMAR
2.1.1 CMAR’s Representative shall attend all meetings and assist the Owner during the pre-construction
phase consistent with these General Conditions. 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 Design Professional 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 Design Professional, on a monthly basis, a written status report detailing the progress of the Work during the pre-construction phase and during the construction phase, including whether the Work is proceeding according to schedule. Each report during the construction phase 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).

Notwithstanding the foregoing in this Section 2.1.2, the CMAR, DP and Owner agree with each other that during the pre-construction phase and the construction phase each will advise the others as promptly as possible of any discrepancies, conflicts or ambiguities that it determines exist in the Construction Documents and that require resolution and of any other items (including, without limitation, actual and foreseeable problems) that require resolution.

2.1.3 Within 30 days of executing this Agreement CMAR shall prepare and submit to Owner a Critical Path Method (CPM) Master Schedule for the Work including the pre-construction and construction phases. The CPM shall include three (3) weeks of Owner review time for Design Submission Documents at each phase and adequate time for government agency reviews and all other necessary approvals. 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 allow for multiple bid packages and Work Packages or portions of the Work to be accepted separately by the Owner if required by Owner.

2.1.4 The Owner, Design Professional, and CMAR will meet after execution of this Agreement to discuss issues affecting the administration of the Work and to implement procedures to permit the Owner, Design Professional, and CMAR to perform their obligations under the Contract Documents and the DP’s contract with the Owner. Among other matters to be covered at this meeting, the Owner, the Design Professional and the CMAR will work out procedures for efficient interaction among them during the pre-construction phase of the Work so that each of the Design Professional, the CMAR and the Owner can perform efficiently and in a cooperative and mutually supportive manner the activities, functions and obligations contemplated by this Agreement and the DP’s contract with the Owner. Among other subjects to be covered by the procedures will be:

(i) Arrangements for collaboration between the DP and the CMAR in preparing Design Submission Documents for the Program Development, Schematic Design, Design Development and Construction Documents subphases and in submitting each set of Design Submission Documents to the Owner for review and for comments by the Owner and group discussions by DP, CMAR and Owner of the Design Submission Documents, which include, without limitation, the Program Development documents, the Schematic Design documents, the Design Development documents, the Construction Documents, the DP’s estimates of Probable Construction Costs and the CMAR’s estimates of Construction Costs.

(ii) Arrangements that encourage frequent informal interaction among the DP, the Owner and the CMAR during the pre-construction phase, especially between submissions of Design Submission Documents under item (i), including among other activities, the DP asking constructability or other questions to the CMAR and otherwise obtaining the benefit of the CMAR's construction knowledge and experience and the DP using that information in its design work on the Project.

(iii) A schedule for the activities of the CMAR, the Owner and the Design Professional during the pre-construction phase.
In addition, at the initial meeting, the Owner and the CMAR with assistance from the Design Professional will develop the procedures for pre-qualification of Subcontractors to bid on the bid packages under Section 2.2.4. Among other items included in the pre-qualification procedures will be a requirement that the CMAR make a reasonable effort to pre-qualify at least three (3) Subcontractors in each trade, a requirement that the CMAR submit to Owner a list of proposed Subcontractors together with such information about the qualifications of each Subcontractor as Owner may reasonably request and a right by Owner to reject one or more proposed Subcontractors, provided that Owner must be reasonable in rejecting a proposed Subcontractor.

If the Owner elects "partnering" for the Project, another subject to be covered in the initial meeting will be development of partnering procedures for the pre-construction phase and the construction phase of the Project. Partnering is a mutual effort by all the parties involved in a Project to cooperate and coordinate efforts in order to achieve the final result. Partnering requires that all parties use their particular expertise for the mutual benefit of all, rather than for the benefit of the one. Partnering requires flexibility, the ability to appreciate the positions of the other parties and to make compromises for the benefit of all. Partnering will be implemented by the utilization of a formal partnering process developed as described above and presented in a separate workshop attended by the CMAR, the Owner, the Design Professional and their key participants. Follow up sessions will occur every three (3) months or as mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this partnering effort during the pre-construction phase and the construction phase will be shared equally by the CMAR, Owner, and Design Professional.

At the commencement of the construction phase of the Work, Owner, CMAR and the Design Professional will have another meeting to review cooperation and, if applicable, partnering during the construction phase and to establish procedures for the construction phase of the Work, including, among other matters, handling of submittals and Owner Site activities schedules. In addition, Owner, CMAR and Design Professional will discuss how to implement the concepts set forth in Section 2.5.8.3.

2.1.5 The CMAR shall cooperate fully with the Owner and Design Professional 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 Design Professional 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 Design Professional, 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 pre-construction phase for all cost, schedule, or alternative systems issues and on all matters relating to construction. The Design Professional shall record and distribute minutes of each meeting.

2.1.8 Neither the Contract Documents nor the DP Contract alone or together shall be deemed to create any contractual relationship between the Design Professional and the CMAR or any separate contractors or Subcontractors, nor shall anything contained in the Contract Documents or in the DP contract be deemed to give any third party any claim or right of action against the Owner, the Design Professional or CMAR which does not otherwise exist without regard to the Contract Documents and the DP Contract.
2.1.9 The initial Work of the CMAR shall consist of its services in connection with the pre-construction phase. The pre-construction phase of the Work shall be parallel to and coincidental with the Program Development, Schematic Design, Design Development, and Construction Documents sub-phases of the Design Professional’s services. Among other pre-construction phase work described in this Agreement or assigned by Owner, CMAR shall perform such “constructability reviews” and “value engineering” as requested by Owner at each design phase. In addition, CMAR shall prepare detailed estimates of Construction Costs using an elemental systems allocation of costs and fees or a CSI allocation of costs and fees as specified in Section 6.5 of the Agreement Between Owner and Construction Manager at Risk to be included as part of each set of Design Submission Documents to verify the Project is within the applicable portions of Owner’s Project Budget.

2.1.10 Subject to the other 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 construction Work is to be performed and has correlated personal observations with the requirements of the Owner’s Project Criteria.

2.1.11 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 any one 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 required unless it is not consistent with the Contract Documents and is not reasonably inferable therefrom as being necessary to produce the intended results.

2.1.12 The organization of the Specifications into divisions, sections, and articles, 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.

2.1.13 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 PRE-CONSTRUCTION SERVICES

2.2.1 CONSULTATION DURING PROJECT DEVELOPMENT

CMAR pre-construction phase services shall include, among the activities provided for in the Contract Documents: team building, and, when requested by the Owner, partnering; management planning; value engineering; constructability reviews; cash flow projections; estimating Construction Costs; development of the Guaranteed Maximum Price; pre-qualification of Subcontractors, bid package strategy and Subcontractor bidding on the bid packages. These services shall include, but not be limited to, review of conceptual design; advice regarding use of the Site and advice regarding Site improvements; selection of materials, building systems and equipment; and recommendations
on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction. A listing of CMAR Pre-construction Phase Scope of Services is attached as Exhibit D.

2.2.2 BUDGETING AND GUARANTEED MAXIMUM PRICE

2.2.2.1 During the pre-construction phase, the CMAR shall perform its services under the Contract Documents for the Pre-construction Phase Services Fee. Payment of the Pre-construction Phase Services Fee will be made in accordance with Section 7.1.1 of the Agreement Between Owner and Construction Manager at Risk. During the construction phase, the CMAR shall complete the construction Work in accordance with the Contract Documents for an amount equal to the sum of (i) the Open Book Cost of the construction Work for the categories of construction Work listed in the GMP Schedule, plus (ii) the Construction Phase Services Fee identified in the GMP Schedule, and (iii), if Savings are being shared with the CMAR, any Savings allocated to the CMAR under Section 7.1. In no event shall the aggregate payments by Owner to Contractor for construction Work exceed the Guaranteed Maximum Price.

2.2.2.2 The CMAR shall assist the Design Professional in evaluating the Owner’s preliminary Project Budget. The Owner shall furnish the CMAR the amount within the Owner’s Project Budget available for the construction Work. The CMAR’s estimates of Construction Costs and the CMAR’s proposed Guaranteed Maximum Price shall not exceed this amount.

2.2.2.3 The amount within the Owner’s Project Budget available for construction Work may be revised only by an Owner approved written modification of this Agreement or a Change Order.

2.2.2.4 No construction Work shall commence until a Guaranteed Maximum Price for the construction Work is agreed in writing by CMAR and Owner. If the construction Work is being done in Work Packages, there will be no GMP for the individual Work Packages.

2.2.2.5 At a time determined by the Owner and the CMAR and no later than the conclusion of the Design Development subphase, the CMAR shall propose a Guaranteed Maximum Price. The proposed GMP shall not exceed the amount within the Owner’s Project Budget available for the construction Work. To do this the CMAR will submit a proposed completed form of the GMP Setting Modification in the format and setting forth the terms and attaching the documents called for by Exhibit B (“Proposed GMP Setting Modification”).

2.2.2.6 The following are requirements relating to the Proposed GMP Setting Modification.

The Proposed GMP Setting Modification is to have attached two proposed GMP schedules with one in elemental systems format and the other in CSI format. Before filling in numbers in the two proposed GMP schedules, the CMAR will develop the proposed form of the two GMP schedules and obtain Owner’s approval of the forms or make changes in the proposed forms as requested by the Owner. As guidance in development of the forms, Owner has attached Exhibit B to these CMAR General Conditions. This exhibit is attached only to show the level of detail expected by Owner.

The proposed GMP and the two proposed GMP schedules must include a bidding contingency and a construction contingency as separate line items.
If the construction Work is to be done in Work Packages, the proposed GMP must be allocated among the Work Packages in the proposed GMP schedule that is in the format (elemental systems or CSI) selected in Section 6.5 of the Agreement Between Owner and Construction Manager at Risk. This will be done by having a separate column for each Work Package in that proposed GMP schedule (including, without limitation, Bidding Contingency and Construction Contingency) and allocating the amount in each line item among the Work Packages by inserting the appropriate amount in the column for each Work Package.

The Proposed GMP Setting Modification is also to have attached a list of the drawings and specifications and other documents used by CMAR in preparing the proposed GMP and a statement of the clarifications and assumptions made by the CMAR to supplement the information in the drawings and specifications (collectively, the “GMP Setting Drawings, Specifications, Assumptions and Clarifications”). The list of drawings, specifications and other documents shall include the project manual (“Project Manual”) and the supplementary general conditions (“Supplementary General Conditions”) as and when issued by the DP, and the Owner’s general project requirements attached as Exhibit B to the Agreement Between Owner and Construction Manager at Risk (“Owner’s General Project Requirements”). The CMAR shall use the Project Manual, the Supplementary General Conditions and Owner's General Project Requirements in preparing the proposed GMP. Each clarification and assumption will be shown in the form of an attached drawing, unless another methodology would more accurately and efficiently set forth the clarification or assumption.

In preparing the clarifications and assumptions that CMAR proposes to be included in the GMP Setting, Drawings, Specifications, Assumptions and Clarifications and to be used by the CMAR in developing the proposed Guaranteed Maximum Price, the CMAR shall consult with the Design Professional and if there are any disagreements as to the clarifications and assumptions between the DP and the CMAR, the disagreements will be discussed by the Owner, the DP and the CMAR.

CMAR and Owner acknowledge that the drawings and specifications will be subject to further development that is consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications and reasonably inferable therefrom. The CMAR understands and agrees that if the CMAR and Owner agree on a GMP, the CMAR will be obligated to perform the construction Work in accordance with the Construction Documents thereafter approved by the Owner (regardless of whether approved by the CMAR) in return for payment by the Owner of the amount described in Section 2.2.2.1, except to the extent that the Construction Documents contain items or details that are not consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications and are not reasonably inferable therefrom. Therefore, in determining the proposed GMP the CMAR will take into account such further development of the Design Submission Documents. The Owner and the Design Professional may review and discuss the GMP Setting Drawings, Specifications, Assumptions and Clarifications with the CMAR in evaluating the proposed GMP. Any such review or discussion and any failure to review or comment on or to advise of any errors or omissions in the GMP Setting Drawings, Specifications, Assumptions and Clarifications by the Owner or the Design Professional shall not be a basis for the CMAR to place any responsibility on the Owner or the Design Professional for any deficiency in the accuracy or completeness of the GMP Setting Drawings, Specifications, Assumptions or Clarifications. CMAR shall have sole responsibility to assure that the GMP Setting Drawings, Specifications, Assumptions and Clarifications are an accurate and complete statement of the CMAR’s intent.
2.2.2.7 The Owner will, at its sole discretion, have the option to accept the proposed GMP Setting Modification or to request the CMAR to modify one or more items in or attached to the Proposed GMP Setting Modification. If the CMAR and Owner reach agreement on the items and attachments to be included in the GMP setting modification, CMAR and the Owner shall execute a GMP setting modification in the format in Exhibit B containing the agreed items and attachments ("GMP Setting Modification"). In this event, the GMP in the GMP Setting Modification will be the GMP for the construction Work and the GMP schedule ("GMP Schedule") included in the Contract Documents will be the GMP schedule attached to the GMP Setting Modification in the format (elemental systems or CSI) selected in Section 6.5 of the Agreement Between Owner and Construction Manager at Risk, as such GMP Schedule is changed from time to time as provided in Sections 2.2.2.8 and 2.2.2.9. Alternatively, the Owner may, in its sole discretion, elect to terminate this Agreement for convenience, per Section 12.1.1. This GMP and GMP Schedule must include the bidding contingency ("Bidding Contingency") and the construction contingency ("Construction Contingency").

2.2.2.8 As part of the process of approving any Change Order, Owner and CMAR shall also agree upon any needed change to the GMP and the GMP Schedule.

2.2.2.9 The following paragraphs state the requirements for and limitations on movement of amounts within the GMP Schedule. Movements of amounts within the GMP Schedule shall not change the GMP.

General. Subject to the requirements and limitations below, the CMAR may move amounts within the GMP Schedule from one line to another line and, if the construction Work is being done in Work Packages, from the column for one Work Package to the column for another Work Package as determined by the CMAR in its good faith reasonable judgment.

Required Notice to Owner For All Movements of Amounts in the GMP Schedule. In all cases (including movement of Bidding Contingency and Construction Contingency amounts), before moving any amount in the GMP Schedule, CMAR shall deliver to Owner written notice of the movement, which shall include:

(i) the amount to be moved;

(ii) the line item, and if applicable the Work Package column, from which the amount is being moved;

(iii) the line item, and if applicable the Work Package column, to which the amount is being moved; and

(iv) a revised GMP Schedule after moving the amount.

Bidding Contingency When Construction Work is Not Being Done in Work Packages. If the construction Work is not being done in Work Packages, there is only one permitted movement of the Bidding Contingency. CMAR is required to make this movement of Bidding Contingency. Promptly after determination of all of the Subcontractor bids to be accepted under Section 2.2.4.8, the CMAR shall move amounts among the line items in the GMP Schedule (including the Bidding Contingency but not including the Construction Contingency) as needed to reflect the accepted Subcontractor bids, and the remainder, if any, in the Bidding Contingency will be moved to the Construction Contingency.
Bidding Contingency When Construction Work is Being Done in Work Packages. If the construction Work is being done in Work Packages, movement of the Bidding Contingency is permitted and is required as follows:

(i) At any time the amounts in the Bidding Contingency line may be moved from one Work Package column to another Work Package column in the Bidding Contingency line, provided that Owner must approve any movement of Bidding Contingency from a later Work Package column to an earlier Work Package column.

(ii) Promptly after determination of the Subcontractor bids to be accepted under Section 2.2.4.8 for each Work Package, the CMAR shall move amounts among the line items in the GMP Schedule (including the Bidding Contingency but not including the Construction Contingency) as needed to reflect the accepted Subcontractor bids for that Work Package, provided that Owner must approve any movement of Bidding Contingency from a later Work Package column to an earlier Work Package column. The remainder, if any, in the Bidding Contingency in the GMP Schedule column for that Work Package will be moved to Bidding Contingency in later Work Package columns.

Promptly after completing the process in item (ii) above for the last Work Package, the remainder, if any, in the Bidding Contingency line will be moved to the Construction Contingency line and allocated among the Work Package columns Construction Contingency as determined by the CMAR.

Construction Contingency.

The amount(s) in the Construction Contingency line may not be moved to a line other than Construction Contingency.

The Construction Contingency may only be used to pay for the following types of costs:

(i) Construction Costs arising from unforeseen causes or details, which should have been anticipated by the CMAR at the time of GMP Setting Modification. Such unanticipated causes or details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are consistent with or reasonably inferable from GMP Setting Drawings, Specifications, Assumptions and Clarifications;

(ii) Construction Costs arising from correction of minor defects not relating to design;

(iii) Construction Costs arising from delays in receipt of materials due to the fault of the CMAR;

(iv) Construction Costs arising from corrections in the construction Work, provided the CMAR has exhausted all reasonable means to obtain correction of same from the responsible Subcontractor;

(v) Construction Costs arising from labor and material overruns; and

(vi) Construction Costs arising from Subcontractor defaults.

The CMAR may use the Construction Contingency for these types of Construction Costs without the necessity of a Change Order and without necessity of a change in the Construction Documents. To use the Construction Contingency, the CMAR must
prepare a written memorandum to the Owner and the Design Professional recommending a use of Construction Contingency, showing the amount of the Construction Contingency to be used, describing the use of the funds, indicating which of subsections (i) through (vi) are the basis for the use, and including a proposed revised GMP Schedule reflecting the use. The Owner will have five (5) days to review and approve or disapprove in writing the proposed use of the Construction Contingency. The only basis for the Owner to disapprove the proposed use of the Construction Contingency is if the Owner believes in its good faith reasonable judgment that some or all of the amount included in the proposed use of the Construction Contingency is not within the types of costs described in subsections (i) through (vi) above.

Obligation of CMAR to Complete Construction Work Within the Contract Time(s) for the GMP. Regardless of any movement of amounts within the GMP Schedule, the CMAR shall have sole responsibility for completing the entire construction Work within the Contract Time(s) for the entire construction Work and for an amount not exceeding the Guaranteed Maximum Price and CMAR shall absorb any costs in excess of the Guaranteed Maximum Price.

2.2.2.10 The construction phase and the pre-construction phase are not mutually exclusive.

The construction phase begins on the Date of Commencement as set under Section 5.2 of the Agreement Between Owner and Construction Manager at Risk. The construction phase may begin before all activities in the pre-construction phase are completed. This will be the case if the Project is divided into Work Packages and may be the case when the project is not divided into Work Packages. Regardless of when the construction phase begins, CMAR will remain obligated to complete all actions included in the pre-construction phase.

The pre-construction phase will end only after (i) approval by Owner of the Construction Documents for the entire construction Work, (ii) performance by CMAR of all services to be performed by CMAR during the pre-construction phase, and (iii) all Subcontractor bids have been accepted by the CMAR for the entire construction Work.

2.2.3 ESTIMATES OF CONSTRUCTION COSTS
2.2.3.1 All estimates of Construction Costs and the Schedule of Values shall include without duplication:
.1 All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the construction Work,
.2 The cost of labor and materials furnished by the Owner calculated at current market rates, including a reasonable allowance for overhead and profit,
.3 The cost of any Owner equipment contract to be assigned by Owner to CMAR or labor for installation for equipment separately provided by Owner which has been designed, specified, selected or specifically provided for by the Design Professional.
.4 The Construction Phase Services Fee;
.5 All bond and insurance premiums;
.6 All applicable taxes; and
.7 A Bidding Contingency and a Construction Contingency.

2.2.3.2 The estimates of Construction Costs shall not include the CMAR’s Pre-Construction Phase Services Fee, sums due the Design Professional, the costs of land, rights of way, financing or other costs which are the responsibility of the Owner.
2.2.3.3 The CMAR shall base each estimate of Construction Cost on the latest Design Submissions Documents and shall discuss with the Design Professional the materials, equipment, component systems and types of construction the DP intends to use to the extent such items are not in the latest Design Submission Documents. The CMAR may make recommendations for modifications in the latest Design Submission Documents or in the items the DP proposes to use.

2.2.3.4 Each estimate of Construction Costs will be prepared using either an elemental systems or a CSI (as selected in Section 6.5 of the Agreement Between Owner and Construction Manager at Risk) method of allocating construction costs and fees and will be in a form agreed by CMAR and Owner with a level of detail comparable to the form in Exhibit C.

The CMAR shall prepare its first estimate of Construction Costs as soon as major Project requirements have been identified and update the estimate no less frequently than bimonthly until completion of Schematic Design Documents. Within two weeks of CMAR’s receipt of completed Schematic Design Documents, the CMAR shall prepare a quantity take-off estimate of Construction Costs. The CMAR shall update the estimate no less frequently than bimonthly. During the Design Development Phase, the CMAR shall prepare a final estimate of Construction Costs preliminary to providing the proposed Guaranteed Maximum Price under Section 2.2.2. All estimates of Construction Costs shall make allowance for bidding and price escalation by including a proposed Bidding Contingency. All estimates of Construction Costs shall include a proposed Construction Contingency to cover items for which the Construction Contingency may be used under Section 2.2.2.9. During the Construction Documents Phase, the CMAR shall continually monitor the cost estimates and develop cost estimates to help assure that the cost of the construction Work remains within both the portion of the Project Budget available for costs of the construction Work and the Guaranteed Maximum Price. No construction Work shall commence until a Guaranteed Maximum Price for the entire Work is established.

2.2.3.5 Estimates shall be independently prepared and shall be based on quantitative takeoffs whenever possible and shall be sustained in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems, and bid packages. Lump sum estimates are not acceptable.

2.2.3.6 CMAR shall submit all estimates of Construction Costs to the Design Professional for review prior to submission of the estimates to Owner. If the Design Professional and CMAR can not agree on any individual cost items, then the highest identified cost will be utilized and noted as such by the CMAR in the estimate of Construction Costs submitted to the Owner as part of the Design Submittal.

2.2.3.7 After review of the CMAR’s cost estimate by the Design Professional, the CMAR shall notify the Owner if it appears that the estimate of Construction Costs will exceed the portion of the Project Budget available to pay costs of the construction Work or the Guaranteed Maximum Price, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the Owner, and make reasonable recommendations for corrective action consistent with the Project Budget or Guaranteed Maximum Price. All costs to correct Design Submission Documents to bring the estimate of Construction Costs back within the portion of the Project Budget available to pay the costs of the construction Work or the Guaranteed Maximum Price shall be borne by the Design Professional and all re-estimating costs shall be borne by the CMAR.

2.2.3.8 Under the DP’s agreement with the Owner, the DP is obligated to provide reasonable cooperation to the CMAR in the development of estimates of Construction Costs and the Guaranteed Maximum Price. Conversely, the CMAR shall provide reasonable cooperation
to the Design Professional in the development of the Design Professional’s estimates of Probable Construction Cost. Design Professional and CMAR shall reconcile their respective cost estimates not later than (7) days after DP’s receipt of CMAR’s estimate of Construction Costs and CMAR’s receipt of the DP’s estimate of Probable Construction Cost to assure the Owner that the DP’s and CMAR’s estimates are within the portion of the Project Budget available to pay costs of the construction Work and the Guaranteed Maximum Price.

2.2.4 OTHER PRE-CONSTRUCTION SERVICES

2.2.4.1 CMAR Review and Input on Drawings and Specifications.

The CMAR shall review the drawings and specifications as they are being prepared and recommend alternative solutions whenever design elements or details affect construction feasibility, schedules or cost. However, nothing contained in this Section 2.2.4 shall be construed to require the CMAR to provide design services.

The CMAR shall make recommendations to the Owner and the Design Professional regarding the division of work in the drawings and specifications to facilitate the bidding and awarding of subcontracts and, if applicable, to allow for the construction Work to be done in Work Packages or for separate construction of a portion of the construction Work to be accepted separately by the Owner. The CMAR’s recommendation shall take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.

In coordination with the Design Professional, the CMAR shall provide a written constructability review of all drawings and specifications relating to the Program Development, Schematic Design, Design Development and Construction Documents subphases, in a form acceptable to Owner. The constructability review shall (1) minimize areas of conflict, errors, omissions, and overlapping of Work to be performed by Subcontractors, (2) confirm that all the construction Work has been included in the drawings, (3) endeavor to minimize cost and value engineer where appropriate, and (4) allow for bid packages and construction in Work Packages or for portions of the construction Work to be accepted separately by the Owner, as required by the Owner.

2.2.4.2 Meeting Attendance. The CMAR shall attend all regular meetings with the Owner and Design Professional and such additional meetings as the Owner may request. All regular meetings shall be scheduled by the Design Professional with the agreement of the CMAR and approval of the Owner. All additional meetings shall be scheduled by the Owner. The Design Professional shall take and distribute minutes of each regular meeting and each additional meeting.

2.2.4.3 Construction Costs Management. The CMAR shall implement a cost forecasting, monitoring and control program for the construction Work. Cost analyses shall include analyses of all trades and construction Work components making a significant contribution to total Construction Costs. The program shall include development of a cost model, monitoring the design process and periodic cost reviews to identify variances from the cost model. Variances shall be provided to the Owner and Design Professional in a report highlighting the variance and recommending corrective action to be taken.

2.2.4.4 Owner Direct Purchases. The CMAR shall investigate and recommend materials and equipment that could be purchased directly by the Owner; consider long lead time procurement and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the Design Professional regarding the schedule for preparation of Construction Documents; and upon approval of the direct
purchases by Owner expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.

2.2.4.5 **Subcontractors.**

The CMAR shall pre-qualify subcontractors to bid on bid packages in accordance with the pre-qualification procedures established under Section 2.1.4; with the assistance of Owner and the Design Professional, prepare the bid packages, including, among other items, the necessary bidding information and bidding forms; develop subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidding subcontractors with the bidding documents and management techniques and with any special systems, materials, or methods. The CMAR shall review all potential subcontractors with the Owner and Design Professional and obtain Owner’s approval of the pre-qualification of each subcontractor. If the CMAR becomes aware prior to any bid date that less than three (3) pre-qualified subcontractors plan to bid any portion of any bid package or that anticipated bids from previously pre-qualified subcontractors are likely to exceed the current estimate of Construction Costs, the Guaranteed Maximum Price or the current Schedule of Values either for the entire construction Work or, when applicable, for the Work Package or portion of the Work to be accepted by the Owner separately included in the bid package, the CMAR shall promptly notify the Owner. CMAR must make a reasonable effort to obtain a minimum of three (3) bids from pre-qualified subcontractors for each bid package.

The bid packages shall include the Project Manual, the Supplementary General Conditions and the Owner’s General Project Requirements. The Owner will specify the Design Submission Documents to be included in the bid packages. The Design Submission Documents included in the bid packages must have been approved by Owner. Owner will give CMAR a reasonable opportunity to review the Design Submission Documents proposed to be included in the bid packages. The CMAR may object to the use of these Design Submission Documents only if the CMAR in good faith reasonably believes that there are items or details in or omitted from the Design Submission Documents that the Owner wants to include in the bid packages that make those Design Submission Documents not consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications and not reasonably inferable from the GMP Setting Drawings, Specifications, Assumptions and Clarifications. In such case, the CMAR will promptly deliver to Owner a memorandum with supporting documentation setting forth the items or details objected to. The Owner and the CMAR (with such assistance from the DP as may be requested) shall use their good faith best efforts to reach a mutually satisfactory resolution of any CMAR objections. As to any such objections on which a mutually satisfactory resolution is not reached, the Owner shall make a good faith reasonable final determination.

If it is determined that the CMAR’s objection is valid, Owner will elect one or a combination of the following steps as to each item or detail validly objected to:

(i) adjustment of the Design Submission Documents to be included in the bid packages to remedy the objection; or

(ii) adjustment of the GMP by use of a Change Order to fairly reflect the anticipated increased cost of the objected to item or detail.

The Owner and the CMAR (with such assistance from the DP as may be requested or required) shall use their good faith best efforts to reach a mutually satisfactory resolution of the adjustments to the Design Submission Documents and/or the GMP. If a mutually
satisfactory resolution is not reached, the Owner shall make a good faith reasonable final determination.

If the construction Work is being done in Work Packages, there will be separate bidding process for each Work Package and separate bid packages for each Work Package.

The bid packages shall contain instructions that all bids are to be addressed to the CMAR and not to the Owner. The CMAR shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Owner and Design Professional concerning which bids from pre-qualified Subcontractors the CMAR proposes to accept. The Owner and Design Professional shall be notified of the time and place of all bid openings and shall be permitted to attend such openings with their representatives and guests. If the CMAR proposes to accept a bid other than a low bid, the CMAR shall justify such action in writing to Owner prior to accepting such bid. CMAR shall not accept a bid other than the low bid until after delivering the justification to Owner and written approval by the Owner, with no increase in the GMP.

2.2.4.6 CMAR Self-Performance of Construction Work. If the CMAR desires to self-perform a portion of the construction Work, the CMAR must submit to Owner its qualifications to perform that portion of the construction Work, the CMAR must submit a bid for that portion of the construction Work in the subcontractor bidding process and, notwithstanding any other provision in the Contract Documents, the CMAR must obtain bids for that portion the construction Work from two other pre-qualified subcontractors. The process for determining the bid to be accepted for such portion of the construction Work will be as provided for selection of other subcontractors in Section 2.2.4.5 with the CMAR being considered to be a pre-qualified subcontractor, with the bids for that portion the construction Work being submitted to Owner rather than the CMAR and with the Owner deciding which bid to accept.

If the CMAR becomes the Subcontractor for this portion of the construction Work, then anything in the Contract Documents to the contrary notwithstanding, (i) this portion of the construction Work will be included in the GMP and the GMP Schedule and the Schedule of Values, (ii) the price for this portion of the construction Work will be a separate guaranteed maximum price ("Sub-GMP") within the GMP for the entire construction Work, (iii) if the Actual Costs of the Construction Work for this portion of the construction Work are less than the Sub-GMP, the CMAR will be paid only the Actual Costs of the Construction Work for this portion of the construction Work and the savings will accrue to the Owner, (iv) the amount paid by the Owner for this portion of the construction Work will not exceed the Sub-GMP, (v) no portion of the Bidding Contingency, the Construction Contingency or any other line item in the GMP Schedule may be moved to apply to this portion of the construction Work, (vi) the CMAR as Subcontractor for this portion of the construction Work must perform this work in accordance with the Design Submission Documents included in the bid package, and (vii) as to performance this portion of the construction Work the CMAR will be a Subcontractor.

2.2.4.7 The CMAR shall provide the requirements and make the assignments of responsibilities for safety precautions and programs for the construction Work, for temporary Project facilities, and for equipment, materials and services for common use of Subcontractors. CMAR shall assure that the foregoing are included in the Construction Documents.

2.3 LEGAL REQUIREMENTS
2.3.1 CMAR shall perform all Work in accordance with all applicable Legal Requirements and shall provide all notices applicable to the Work.
2.3.2 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 construction Work.

2.4 GOVERNMENT APPROVALS AND PERMITS

2.4.1 Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the construction Work by any government or quasi-government entity having jurisdiction over the Project.

2.5 CMAR's CONSTRUCTION PHASE SERVICES

2.5.1 The CMAR shall construct the Project as provided in the Contract Documents and in accordance with the Construction Documents.

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.

2.5.2 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents and the Construction Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.5.3 CMAR shall only employ Subcontractors who are properly licensed and fully committed to performing the construction Work consistent with the Construction Documents and with the same degree of skill, quality and competence as CMAR.

2.5.4 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.

2.5.5 CMAR is responsible for coordinating the activities of all Subcontractors. If Owner is performing other work with separate contractors under its control as part of the Project or as a separate project, CMAR agrees to cooperate and coordinate its construction 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:

2.5.5.1 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 Representative may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the Site and their work.
2.5.5.2 Upon request of the CMAR, the Owner will provide the CMAR with a copy of all plans, specifications, schedules and other data relating to other contracts or work. The CMAR shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the Owner in writing of any conflicts with the construction Work to be performed by the CMAR. In no event shall such notice be given so late as to interfere with or delay the construction Work to be performed by the CMAR. Failure of the CMAR to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the CMAR may have as a result of the necessity to coordinate the CMAR's construction Work with other activities.

2.5.5.3 Should the CMAR sustain any damage through any act or omission of any other contractor, CMAR shall have no 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.

2.5.5.4 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 such proceedings or 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 and shall reimburse the Owner for all attorney's fees and court or other costs which the Owner has incurred.

2.5.6 CMAR shall keep the Site free from debris, trash and construction wastes to permit CMAR to perform its construction Work 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 to be accepted separately by the Owner, CMAR shall remove all debris, materials, wastes, equipment, machinery and tools from the construction Work to permit Owner to occupy the entire construction Work or portion of the construction Work for the use for which it is intended.

2.5.7 Any changes affecting previously approved construction Work shall require prior written approval of the Owner.

2.5.8 CONTROL OF THE CONSTRUCTION WORK

2.5.8.1 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 Design Professional to complete the construction Work in accordance with the Contract Documents and within the Contract Time(s).

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

2.5.8.3 The CMAR shall schedule and conduct weekly progress meetings at which the Owner, Design Professional, 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, Design Professional 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 Cost.
Price, (ii) to limit and fix actual problems, and (iii) to anticipate and then 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.

2.5.9 DAILY LOG

2.5.9.1 The CMAR shall maintain a daily log of construction activities for each calendar day of the Contract Time(s), using a form approved by the Design Professional. The CMAR shall document all activities at the Site, including:

A. 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;
B. Soil conditions which adversely affect construction Work at the Site;
C. The hours of operation by CMAR and individual Subcontractor personnel;
D. The number of CMAR and Subcontractor personnel present and working at the Site, by subcontract and trade, and updated schedule activity number.
E. The equipment active or idle at the Site;
F. A description of the construction Work being performed at the Site by updated schedule activity number.
G. Any delays, disruptions or unusual or special occurrences at the Site;
H. Materials received at the Site; and
I. A list of all visitors at the Site.

2.5.9.2 The CMAR shall provide copies of the daily logs to the Owner on a weekly basis. The daily log will not satisfy any requirement in the Contract Documents of written notice to the Owner.

2.5.10 SUPERVISION AND CONSTRUCTION PROCEDURES

2.5.10.1 The CMAR shall supervise and direct the construction 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 construction Work under the Contract Documents and in accordance with the Construction Documents.

2.5.10.2 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 construction Work or furnishing materials under a contract with the CMAR or any Subcontractor.

2.5.10.3 The CMAR shall not be relieved from its obligation to perform the construction Work in accordance with the Contract Documents and the Construction Documents either by the activities or duties of the Design Professional 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 2.5.10.3 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 Design Professional upon which the CMAR is dependent.

2.5.10.4 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 construction 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 proves to be unsatisfactory to the CMAR or ceases to be in its
employ. 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.

2.5.10.5 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 construction Work of any unfit person or anyone not skilled in the task assigned to him or her.

2.5.10.6 The CMAR shall at all times allow the Owner, Design Professional, or any other designated representatives access to the construction Work to observe progress and inspect the quality of work and conformance to the Construction Documents.

2.5.10.7 Any construction Work required to be observed or inspected, as applicable, by the Design Professional and/or the Owner prior to being covered, which is covered without prior observation or inspection, as applicable, or without prior consent of the Design Professional and the Owner, must be uncovered and recovered by the CMAR, if requested by the Design Professional or the Owner, at no cost to Owner, notwithstanding the provisions of the next following Subsection.

2.5.10.8 CMAR shall notify the Owner and Design Professional in writing at least 24 hours prior to the time at which the Owner or Design Professional must be present to perform an inspection or observation, as applicable. Failure to provide such notice shall make the CMAR solely responsible for all consequences of non-inspection and non-observation and any required access to the Work.

2.5.11 ADMINISTRATION

2.5.11.1 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 Design Professional’s Representative as listed below:

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<th>Design Professional’s Representative:</th>
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2.5.12 CONSTRUCTION DOCUMENTS

2.5.12.1 The CMAR shall study and compare the Construction Documents in advance of beginning each portion of the construction Work and immediately report to the Design Professional and Owner any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

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

2.5.12.3 In the event of any conflict or ambiguity the Construction Documents shall be interpreted as being complementary, requiring a complete Project or designated portion thereof to be accepted separately by the Owner. 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) Specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in Section 2.5.12.3(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 Design Professional before performing the construction Work.

2.5.12.4 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 also include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material 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.

2.5.13 SUBMITTALS, DRAWINGS AND SHOP DRAWINGS

2.5.13.1 The CMAR shall maintain at the Site, for the use of the Owner and of the Design Professional, 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. These shall be turned over to the Design Professional by the CMAR at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the Owner.

2.5.13.2 The CMAR shall submit to the Design Professional, with such promptness as to cause no delay in the construction Work or in the work of any other contractor, all submittals and shop drawings as required by the Construction Documents and the other Contract Documents or as necessary to illustrate details of the construction Work.

2.5.13.3 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:

A. Date of submission
B. Name of Project
C. Location of Project
D. Branch of Work (specification section)
E. Project number
F. Name of submitting CMAR
G. Name of Subcontractors
H. Revision number

2.5.13.4 All Subcontractor submittals and shop drawings shall be reviewed by the CMAR prior to being submitted to the Design Professional and shall bear a written statement by the CMAR that the submittals and shop drawings are consistent with the Construction Documents and other Contract Documents or if not totally consistent shall bear a written statement indicating all deviations from the Construction Documents and other Contract Documents. Any submittals or shop drawings submitted without the statements 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 Construction Documents and other Contract Documents as required by Section 2.5.13.5.

2.5.13.5 The CMAR shall include with submittals and shop drawings, a letter indicating all deviations from the Construction Documents and other Construction Documents. Failure to so notify the Design Professional of such deviations will be grounds for subsequent rejection of the related construction Work or materials. If, in the opinion of the Design Professional, the deviations are not acceptable, the CMAR must furnish the item as specified or as indicated on the drawings included in the Construction Documents and in accordance with the other Contract Documents.
2.5.13.6 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 construction Work. Submittals and shop drawings shall indicate in detail all parts of an item of construction Work, including erection and setting instructions and engagements with work of other trades or other separate contractors.

2.5.13.7 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 Construction Documents and other Contract Documents. If any specified material item or part is not available, the CMAR shall so indicate to the Design Professional.

2.5.13.8 The Design Professional 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 assume a ten (10) day review period for each submittal or set of shop drawings. For complex submittals, the CMAR must assume two ten (10) day review cycles. If review and approval are delayed beyond ten (10) days, the Design Professional 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 Construction Documents or other Contract Documents, unless it has been called to the Design Professional'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 effect 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 Contract Documents and is without prejudice to any and all rights under any surety bond.

2.5.13.9 If the Design Professional 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 construction Work, shall promptly submit a submittal or shop drawing conforming to the requirements of the Construction Documents and other Contract 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 Design Professional. 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.

2.5.13.10 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 construction 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 construction Work. Only prints bearing this approval will be allowed on the Site.

2.5.14 PRODUCT SAMPLES, TESTS, AND CERTIFICATES

2.5.14.1 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 construction Work or in the work of any other contractor and to allow time for consideration by the Design Professional and the Owner. CMAR shall submit product samples to the Design Professional and/or Owner for review and approval in accordance with Sections 2.5.13.1 through 2.5.13.10 above and this Section 2.5.14.
2.5.14.2 Each product sample must be accompanied by a letter of transmittal containing the following information:
A. Date of submission
B. Name of Project
C. Location of Project
D. Branch of construction Work (specification section number)
E. Project number
F. Name of submitting CMAR
G. Name of Subcontractor

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

2.5.14.4 No tests, inspections, observations or approvals performed or given by the Owner or the Design Professional 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 Design Professional in administering this Agreement shall relieve the CMAR from its duty to perform the construction Work in accordance with the Construction Documents, the other Contract Documents and applicable law.

2.5.14.5 Unless the Design Professional is requested at the time of submittal to return samples at the CMAR's expense, rejected samples will be destroyed.

2.5.14.6 After delivery of materials, the Design Professional 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 construction Work strictly complies with the Construction Documents and the Contract Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

2.5.14.7 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 construction Work, the Design Professional and Owner shall each have the right to cause their removal and replacement by items meeting Construction Document and Contract Documents requirements or to demand and secure appropriate reparation to the Owner from the CMAR.

2.5.15 AS-BUILT DRAWINGS

2.5.15.1 Prior to Final Completion, the CMAR shall complete and turn over to the Design Professional the as-built drawings for review by the Design Professional. 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 Orders 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.
2.5.15.2 For any changes or corrections in the construction Work which are made subsequent to Substantial Completion, such revisions shall be submitted to the Design Professional as part of the as-built drawings submitted under Section 2.5.15.1.

2.5.16 SCHEDULE AND COORDINATION
2.5.16.1 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 construction Work properly.

2.5.16.2 With the submission of the proposed GMP for the entire construction Work, the CMAR shall submit a detailed CPM construction schedule for the entire construction Work, which shall provide for the expeditious and practicable execution of the construction Work. The schedule shall be consistent with any previously issued schedules, not to exceed time limits current under the Contract Documents for the entire construction Work and shall be related to the entire construction Work and the entire Project to the extent required by the Contract Documents.

2.5.16.3 The schedule for the performance of the construction Work 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.

2.5.16.4 The CMAR shall prepare and keep current, for the Design Professional’s approval, a time schedule of submittals which is coordinated with the CMAR's construction schedule and allows the Design Professional the specified time to review submittals.

2.5.16.5 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.

2.5.16.6 In addition to the monthly update, the CMAR’s schedules shall also be revised at appropriate intervals as required by the conditions of the construction Work or as directed by the Owner with a printed and electronic copy submitted to the Owner and Design Professional in a format acceptable to the Owner.

2.5.16.7 The CMAR shall perform the construction Work within the identified times of the most recent schedule and consistent with the established Contract Time(s).

2.5.16.8 The parties agree that if the CMAR submits an original or updated schedule which shows the Project and/or individual milestone(s) 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.

2.5.16.9 Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the construction 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 Owner-caused time savings. In such an event, the CMAR shall not be entitled to receive a time extension or delay damages until all Owner-caused timesavings are exceeded and the contractual completion date or milestone date is also exceeded.

2.5.16.10 It is agreed that no time extensions shall be granted nor delay damages paid 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.

2.6 CMAR’S RESPONSIBILITY FOR PROJECT SAFETY

2.6.1 CMAR recognizes the importance of performing its construction Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at or in the vicinity of the construction Work, whether working or visiting the Project or Campus; (ii) any construction Work, including materials and equipment incorporated or stored on or off Site; and (iii) all other or adjacent property, whether owned by Owner or other persons. 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 construction 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 construction 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.

2.6.2 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 quasi-government authorities having jurisdiction over matters involving the construction Work, any injury, loss, damage or accident occurring at the Site.

2.6.3 CMAR's responsibility for safety under this Section 2.6 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 construction Work.

2.6.4 The requirements in this Section 2.6 supplement and are in addition to the other requirements in the Contract Documents, including, without limitation, Article 5 of these CMAR General Conditions.

2.7 WARRANTY

2.7.1 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 Construction Documents and Contract Documents, of good quality, in conformance with the Construction Documents and 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 construction 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 2.7 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 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 Work Packages or portions, this means that the warranty for each Work Package or portion of the Project will commence upon Substantial Completion of the last Work Package or portion, 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.

2.8 CORRECTION OF DEFECTIVE WORK

2.8.1 If any portion of the construction Work is covered over contrary to the request of the Design Professional or Owner or as required by the Contract Documents or the applicable building standards, it must be uncovered for observation at the CMAR’s expense if requested by the Design Professional or Owner in writing.

2.8.2 If any portion of the construction Work, other than those portions required to be inspected or observed by the Design Professional, the Owner or others, prior to being covered, has been covered over, the Design Professional or Owner may request that it be uncovered for inspection or observation, as applicable. If such portion is found to be in accordance with the requirements of the Construction Documents and other Contract Documents, the cost of uncovering it shall be charged to the Owner as a Change Order. If such portion is found not to be in accordance with the requirements of the Construction Documents and other Contract Documents, the CMAR shall bear such costs.

2.8.3 CMAR agrees to promptly correct any construction Work that is found not to be in conformance with the Construction Documents and other Contract Documents, whether previously inspected or observed 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 Work Packages or portions Substantial Completion of the last Work Package or portion as determined by the Contract Documents. Nothing in this Section 2.8.3 shall waive any rights that the Owner may have under Arizona law.

2.8.4 CMAR, upon receipt of written notice from Owner that the construction Work is not in conformance with the Construction Documents or other 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 construction Work, including the correction, removal or replacement of the nonconforming construction Work and any damage caused to any other parts of the construction Work affected by the nonconforming construction 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 construction Work with its own or other forces. CMAR shall be responsible for all costs and expenses that Owner incurs in remedying any construction Work not in conformance with the Construction Documents or Contract Documents, including at its sole discretion any of its own staff time costs and all Design Professional or other fees incurred. Owner will notify CMAR of it’s intent to make such corrections at or before the commencement of the corrective work.

2.8.5 The two year period referenced in Section 2.7.1 applies only to the CMAR’s obligation to correct construction Work not in conformance with the Construction Documents or Contract 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, Owner is an instrumentality of the State of Arizona, acting in its sovereign capacity.

ARTICLE 3
DESIGN PROFESSIONAL’S SERVICES AND RESPONSIBILITIES

3.1 The Design Professional will be the initial interpreter of the requirements of the Construction Documents. The Design Professional 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 Construction Documents.

3.2 The Design Professional 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 Design Professional’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 Design Professional will take appropriate action on CMAR’s requests for Change Orders and may authorize minor changes in the Work as described in Section 10.3.

3.4 The Design Professional and Owner will each have authority to reject construction Work which does not conform to the Construction Documents or 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 Design Professional 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 construction Work.

3.5 Based on the Design Professional’s observations of the construction Work, evaluation of applications for payment and consultation with the Owner, the Design Professional will determine the amount owing to the CMAR and will issue certificates for payment.

3.6 DESIGN SERVICES

3.6.1 Under separate contract with the Owner, the Design Professional shall submit to Owner all required Design Submission Documents to describe the Project’s essential elements. The Design Submission Documents required of the Design Professional will include drawings, specifications, and other documents as may be necessary to fully identify the Project scope and materials, together with the DP's estimates of Probable Construction Cost. The CMAR shall submit to the Owner detailed estimates of Construction Costs as part of each design submission. At the time of the scheduled submission, CMAR, Design Professional and Owner shall meet and confer about the submission. During the meeting, the CMAR and Design Professional shall identify, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or previously submitted Design Submission Documents and any changes in the CMAR’s estimated Construction Costs or the DP’s estimate of Probable Construction Cost. Minutes of the meetings will be maintained by the Design Professional and provided to all attendees for review. Within three (3) weeks following the design review meeting, Owner shall approve or reject the Design Submission Documents and the CMAR's estimate of Construction Costs and the DP’s estimate of Probable Construction Cost. Owner may reject full or partial design submittals or which do not conform with the Owner’s Project Criteria or the overall Project concepts, which are not within the portion of the Project Budget available for payment of construction Costs or not within the Guaranteed Maximum Price or for any other reasonable cause consistent with the intent of the Contract Documents. Upon such rejection the Design Professional shall redesign or reengineer the rejected portion of the design submission. If Owner rejects the CMAR’s estimate of Construction Costs, CMAR shall revise the estimate of Construction Costs at no additional cost, such that it meets Owner's requirements. All deviations from the Owner’s Project Criteria, the applicable
portion of the Project Budget or the Guaranteed Maximum Price must be approved in writing by the Owner.

3.6.2 As necessary for the timely completion of the construction Work, the Design Professional shall submit to Owner for Owner's review and approval or rejection proposed Construction Documents describing the requirements for construction of the Project. The Owner, Design Professional and CMAR shall have design review meetings to discuss the proposed Construction Documents consistent with Section 3.6.1 above, and Owner shall review and approve or reject the proposed Construction Documents within three (3) weeks.

3.7 The Design Professional will provide administration of this Agreement on behalf of the Owner as described throughout this Agreement and in the DP's separate agreement with Owner.

3.8 In interacting with the CMAR, the Design Professional will be a representative of the Owner during construction and until the two-(2) year warranty period has expired. The Design Professional is not the “Owner's Representative” as such term is used in the Contract Documents. The Design Professional and the CMAR shall advise and consult with the Owner. All instructions and communications by the Design Professional to the CMAR shall be copied to the Owner. The Design Professional 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 the construction Work. Failure of the Owner or it’s representatives to notify the CMAR shall not reduce, change, lessen or alleviate in any way, uties and obligations under the Contract Documents.

4.3 Owner shall review and approve or reject the CMAR's estimates of Construction Costs within three (3) weeks of receipt of the documents as required in this Agreement. 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 under the Owner's control. 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 the construction Work in a timely manner and consistent with the Contract Documents.

4.5 As to all pre-construction phase Work of the CMAR, the Owner shall reasonably cooperate with the CMAR to keep the Work within the applicable portions of the Project Budget and the Owner will reasonably consider all appropriate and reasonable recommendations of the CMAR, including, without limitation, recommendations for redesign, deductive alternates, reductions in the Work, value engineering, modifications to the Contract Documents or the exercise of other rights or remedies as may be available elsewhere under this Agreement.

If at any time before or after the GMP Setting Modification it is reasonably apparent to the Owner that the cost of the construction Work cannot be kept within the portion of the Project Budget available for construction Work 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.
4.6 The Owner, through the Design Professional and consistent with the Owner’s contract with the Design Professional, shall furnish the CMAR a sufficient quantity of documents required for the CMAR to perform its services under this Agreement during the pre-construction phase.

ARTICLE 5
SITE CONDITIONS AND ENVIRONMENTAL MATTERS

5.1 The CMAR shall thoroughly acquaint himself or herself with all information provided by the Owner or the Design Professional concerning the conditions of the construction Work. In addition, the CMAR shall be responsible for obtaining information concerning conditions of the construction Work typically obtained within the construction industry to assess conditions for similar projects. The CMAR is responsible for correctly and fully estimating the difficulty and cost of successfully performing the construction Work.

5.2 The CMAR agrees that before submitting a proposed Guaranteed Maximum Price the CMAR will thoroughly examine (i) the Site, (ii) the current Design Submission Documents, (iii) boring data and all other soils information and as-built data provided to CMAR by Owner or the Design Professional, (iv) all other information provided by Owner or the Design Professional concerning the conditions of the construction Work, and (v) all information which the CMAR is responsible to obtain under Section 5.1 (the information described in items (i) through (v) is referred to collectively as the "Site Information"). 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. If the CMAR determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the Design Professional and the Owner in writing. If, after determining that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the Owner, the CMAR remains dissatisfied or uninformed, the CMAR shall refrain from submitting a proposed Guaranteed Maximum Price until the matter is resolved. If the CMAR submits a proposed Guaranteed Maximum Price, the CMAR shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information. By submission of a proposed Guaranteed Maximum Price, CMAR represents and warrants to Owner that CMAR has examined and evaluated the Site Information and has taken the Site Information into account in preparing its proposed GMP.

5.3 The CMAR shall immediately, and before such conditions are disturbed, notify the Design Professional and the Owner in writing of concealed or latent physical conditions or subsurface conditions encountered at the Site that were not known by the CMAR, that could adversely affect the Cost of the Work or the timely performance thereof, and that either:

5.3.1 differ materially from those indicated by the Site Information and could not have been discovered by careful examination and investigation of the Site Information provided or obtained at the time of submission of the proposed Guaranteed Maximum Price or by the date on which the GMP was agreed to in writing by Owner and CMAR; or

5.3.2 are of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in construction Work of the character provided for in the Contract Documents.

The phrase “concealed or latent physical conditions or subsurface conditions encountered at the Site that were not known by the CMAR” include among other matters Hazardous Substances (defined in Section 5.6.2 below) and archaeological conditions (described in Section 5.9 below) falling within Section 5.3.1.

5.4 The Design Professional 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 under Section 5.3. If the Design Professional and/or the Owner find that conditions are so materially different as to support an
equitable adjustment in the proposed GMP or the Guaranteed Maximum Price in the GMP Setting Modification or the Contract Time(s), an equitable adjustment will be accomplished by written change letter in the case of an equitable adjustment to the proposed Guaranteed Maximum Price or by Change Order in the case of an equitable adjustment to the Contract Time(s) or the Guaranteed Maximum Price in the GMP Setting Modification. Adjustment of the proposed GMP or the GMP in the GMP Setting Modification 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 Design Professional and/or the Owner determine that no change letter or Change Order will be issued, the Contract Time(s) will not be changed and there will be no change in, as applicable, the proposed GMP or the GMP in the GMP Setting Modification. Regardless of the outcome, the CMAR shall continue with the construction Work.

5.5 No claim by the CMAR for an increase in the proposed GMP, in the GMP in the GMP Setting Modification or in the 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:


“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 Conversation 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 construction 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 construction Work and that have become Hazardous Waste in the course of the construction Work; and
(c) whether it consists of Hazardous Substances that are brought on to Owner’s property for or during the construction Work by CMAR or a Subcontractor and that have become Hazardous Waste in the course of the construction 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 any Release of a Hazardous Substance on Owner’s property during the construction Work arising from acts or omissions of CMAR or any Subcontractor, provided that this will include a Release of a Hazardous Substance pre-existing on Owner’s property only if the conditions in item (a) or item (b) below are satisfied:

(a) If the Owner has made CMAR aware of the existence of the Hazardous Substance pre-existing on Owner’s property and if the Owner has provided an area free from the Hazardous Substance sufficient for the CMAR to perform the construction Work; or
(b) If the Owner has not made CMAR aware of the pre-existing Hazardous Substance on Owner’s property and if the CMAR and/or the Subcontractor failed to acted reasonably when it encountered the Hazardous Substance.

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 construction Work and (iv) all of their activities in respect of the construction Work.

5.6.3.2 **Hazardous Substances and Hazardous Waste.**

(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 construction 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 (but not Project Hazardous Waste) brought onto Owner’s property during the construction Work or used in connection with the construction Work. As provided below, Owner will dispose of Project Hazardous Waste.

(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 or any Hazardous Waste.

5.6.3.3 **Releases of Hazardous Substances.** Upon any Release of any Hazardous Substance in connection with the construction 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, and if the Release is not a CMAR Release, Owner will pay to CMAR the reasonable costs incurred by CMAR in taking such reasonably necessary immediate action necessary to contain the Release. Owner may elect to have CMAR control and carry out any containment, clean-up, removal and remediation activity as to a Release, provided that, if the Release is not a CMAR Release, Owner will pay CMAR for performing such activity and CMAR will not be obligated to begin performing the activity until CMAR and Owner have agreed in writing on the tasks to be performed by CMAR and the amount to be paid to CMAR for performing the 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 university, and (B) as reasonably consistent in the judgment of Owner with such habitation and uses.

5.6.3.4 **Project Hazardous Waste.** Owner will arrange for handling, storage and disposal of any Project Hazardous Waste. CMAR will advise Owner promptly of the creation or generation 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.
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 immediately 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 construction 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 or Hazardous Waste 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 construction 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 area in which CMAR and Subcontractors are to perform the construction Work in order to prevent a Release of an existing Hazardous Substance on Owner’s property, provided that in such event Owner must make CMAR aware of the existence of the Hazardous Substance on Owner’s property and Owner must provide an area free from the Hazardous Substance sufficient for the CMAR and Subcontractors to perform the construction Work. Whenever Owner does this, CMAR and Subcontractors shall carry out their actions in performing the construction Work within the specified limited area. In addition, in performing the construction Work, the CMAR and the Subcontractors 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 construction Work area unless CMAR has requested and obtained written approval from Owner’s Project Manager. Any question about the scope of the permitted Work area must be resolved by Owner’s Representative.

5.6.5.2 ASBESTOS CONTAMINATION IN OWNER’S UTILITY TUNNEL SYSTEM.

THERE IS ASBESTOS CONTAMINATION IN OWNER’S UTILITY TUNNEL SYSTEM.
A Restricted Access Provision for the Utility Tunnel System is in-place due to asbestos-contamination present in the tunnel floors. Settled dusts on utility lines may also contain asbestos. Signage is located at each tunnel entrance that warns of asbestos. Asbestos is classified as a known human carcinogen and U.S. Occupational Safety and Health Administration regulations are in-place to limit employees' exposure to airborne asbestos fibers.

CMAR is responsible for compliance with all Environmental Law and OSHA requirements relating to exposure of CMAR’s and Subcontractors’ employees and other workers to this asbestos.

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

5.6.5.4 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 Design Professional 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.

5.6.5.5 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.

5.6.5.6 PCBs. If polychlorinated biphenyl (PCB) containing ballasts, transformers and other electrical equipment are present in any 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. The packaged waste ballasts, transformers and other electrical equipment will be disposed of as Hazardous Waste as provided in Section 5.6.3.4.

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 5.6.5.6.

5.6.5.7 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 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 The CMAR, after the GMP is set in the GMP Setting Modification under Section 2.2.2 and prior to the start of any construction Work, shall furnish to the Owner satisfactory performance and payment bonds, each in an amount equal to one hundred percent (100%) of the GMP. These bonds shall not to 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 as set forth in Exhibit A hereto 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 to or better than bonds provided by 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 pre-construction phase Work, provided that until commencement of the construction phase of the Work the amount of the commercial general liability insurance may be $1,000,000 per occurrence and products and completed operations aggregate limit and general aggregate minimum limit of $2,000,000. 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 coverage's specified herein or the joint venture shall be the 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. Notwithstanding the foregoing, if one or more smaller Subcontractors have the various required insurance coverages but in a lower amount than required under this Section 6.3, CMAR may make a request to Owner for approval of the lower amount and Owner will make a determination.

6.3.1 COMMERCIAL GENERAL LIABILITY Commercial general liability insurance, with minimum limits of $[Insert applicable dollar amount from left hand column in chart below] per occurrence, and products and completed operations aggregate limit and general aggregate minimum limit of $[Insert applicable dollar amount from right hand column in chart below]. 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 State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds with respect to this Agreement as to the acts and omissions of CMAR and the acts and omissions of Subcontractors and others for which CMAR is responsible under applicable law and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, 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 this Agreement and (ii) termination of this Agreement.
Minimum Required Insurance Limits
Based on Total Construction Costs

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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 State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds with reference to this Agreement as to acts and omissions of CMAR and acts and omissions of Subcontractors and others for which CMAR is responsible under applicable law and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by CMAR.

6.3.3 WORKERS COMPENSATION AND EMPLOYERS LIABILITY

Workers compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

- Workers Compensation (Coverage A) Statutory Arizona benefits
- Employers Liability (Coverage B) $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 insure 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 Design Professional’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 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.

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 State of Arizona, the Arizona Board of Regents and Arizona State University 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 Arizona Board of Regents and Arizona State University shall be issued and delivered prior to commencement of the pre-construction phase or construction phase of the Work as specified in Section 6.2 and shall identify this Agreement and include certified copies of endorsements naming the State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds for liability coverages as to acts and omissions of CMAR and acts and omissions of Subcontractors and others for which CMAR is responsible under applicable law and as to liability coverages shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, 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 cancelled until at least 50 days prior written notice has been given to Owner, the State of Arizona, the Arizona Board of Regents, Arizona State University. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this 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 STATE OF ARIZONA, THE ARIZONA BOARD OF REGENTS OR ARIZONA STATE UNIVERSITY** 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 State of Arizona, the Arizona Board of Regents and Arizona State University and their regents, officers, officials, agents, employees and volunteers. 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 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 construction 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 GMP Setting Modification under Section 2.2.2, as such GMP may be modified as provided in the Contract Documents.

7.1.2 All Savings shall be retained by the Owner.

7.2 SCHEDULE OF VALUES.

7.2.1 As part of the proposed GMP setting modification under Section 2.2.2, the CMAR shall submit to the Owner, and the parties shall agree upon a complete schedule of values ("Schedule of Values") for the entire construction Work using either an elemental systems or a CSI allocation of costs and fees as agreed in Section 6.4 of the Agreement Between Owner and Construction Manager at Risk. The Schedule of Values shall be based upon the 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 Guaranteed Maximum Price, the Schedule of Values will be adjusted accordingly. CMAR shall provide written approval from its surety for the approved Schedule of Values to be used as a basis for monthly progress payments as provided in Section 7.4.1.

7.3 APPLICATIONS FOR PAYMENT.

7.3.1 The CMAR shall deliver to the Design Professional and Owner on the last business Day of each month a sworn application for payment in the format specified by Owner. Each application for payment (i) shall be for an amount based on the Schedule of Values and determined by the percentage of completion of the construction Work, (ii) shall show the percentage of completion of each category of the construction Work, (iii) shall be accompanied by an acceptable updated CPM construction schedule narrative report per Section 2.5.16, and (iv) shall also be accompanied by a written accounting in a form agreed by CMAR and Owner of the Actual Cost of the Construction Work completed as of the date of the last prior request for payment. In addition, with each application for payment CMAR shall submit such supporting documentation as is necessary or appropriate in the reasonable judgement of Owner to justify all amounts paid to the CMAR under prior applications for payment. Provided the properly submitted and accurate application for payment and the required accompanying documents are 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 Design Professional relating to the CMAR’s application for payment.

7.3.2 The Design Professional, 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 amount in each CMAR request for payment to the extent approved for payment in the Design Professional’s certificate for payment, less retainage as set forth in Section
7.5 RETAINAGE.

7.5.1 With respect to the CMAR’s fee for the pre-construction phase of the Work and the premiums for bonds and insurance, no retainage shall be withheld.

7.5.2 With respect to all payments for the construction Work (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, 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 construction Work and there is no specific cause or claim relating to the construction Work requiring a greater amount to be withheld. After that point in time, Owner shall 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 payment of liquidated damages or other Owner claims shall be fully released within thirty (30) Days of the Design Professional’s issuance of a Certificate of Final Completion for the entire Work provided that any retention by the Owner after such thirty (30) 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. Retainage will not be released upon Final Completion of a portion of the Work that Owner has agreed to accept separately.

7.6 EARLY RELEASE OF SUBCONTRACTOR RETAINAGE.

7.6.1 If a Subcontractor has completed its portion of the construction 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 the construction Work of such Subcontractor 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 or subsequent incorporation in the construction 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.

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, material men, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the construction Work or by reason of being a creditor of any of the foregoing persons or entities. CMAR shall provide conditional waivers of lien through the date of the application for payment from each Subcontractor and supplier of any tier with each application for payment and when requested by Owner. 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 construction Work or a portion of the Work that the Owner has agreed to accept separately, 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 construction Work or the portion of the construction Work that Owner has agreed to accept separately, 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 construction Work or portion of the construction Work that the Owner has agreed to accept separately 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 will not be adequate to cover completion of the entire construction Work and liquidated damages for any anticipated unexcused; or
7.9.1.10 Any other reason which is 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 fourteen (14) 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 pay the CMAR within fourteen-(14) Days after the date established herein for payment by the Owner, 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 construction Work or a portion thereof which the Owner has agreed to accept separately, is Substantially Complete, the CMAR shall notify the Owner and the Design Professional and submit to the Owner and Design Professional a comprehensive list of items to be completed or corrected relating to the entire construction 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 Design Professional and CMAR will jointly make an observation or inspection, as applicable, to determine whether Substantial Completion has occurred. If it is determined by the Owner that the entire construction Work or a portion thereof, as applicable, is Substantially Complete, the Owner 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 Design Professional 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 construction Work in accordance with the Contract Documents.

7.12 FINAL COMPLETION AND FINAL PAYMENT

7.12.1 Completion of all outstanding construction Work items noted in the Punch List and other Contract Documents requirements is required for Design Professional and Owner to certify Final Completion of the entire construction Work 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 construction Work, submission to and review and approval by Design Professional and Owner of as-built drawings and all record and closeout 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 construction Work shall become due until the CMAR submits to the Owner as to the entire construction Work or the portion of the construction Work that Owner has agreed to accept separately:

7.12.2.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the construction Work or portion thereof, as applicable, for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied;

7.12.2.2 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 written notice has been given to the Owner;

7.12.2.3 Consent of surety to the final payment;

7.12.2.4 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;

7.12.2.5 Unconditional waivers of lien from all Subcontractors, material men, suppliers, or other persons or entities having provided labor, materials and equipment relating to the entire construction Work or portion thereof, as applicable;

7.12.2.6 Approval by Design Professional as being accurate and complete of the as-built drawings submitted by CMAR under Section 2.5.15.1; and

7.12.2.7 A written accounting in a form agreed by CMAR and Owner of the Actual Cost of the Construction Work for the entire construction Work or portion thereof, as applicable. 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 construction Work, Final Completion thereof is materially delayed through no fault of the CMAR or by the issuance of additional Change Orders or
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 construction Work fully and properly completed. If the remaining balance for construction 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 construction 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 construction Work after final payment; (b) latent defects arising after final payment; or (c) the terms of warranties set forth in or required by the Contract Documents and other rights provided under Arizona law.

7.13 ALLOWANCES.
7.13.1 The CMAR shall include in the Guaranteed Maximum Price 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, less applicable trade discounts. Owner and CMAR shall agree prior to preparation of the CMAR's first Estimate of Construction Costs whether taxes on allowances will be included in the allowances or in the taxes line item in the Estimates of Construction Costs, the proposed GMP schedule included with the Proposed GMP Setting Modification, the GMP Schedule and the Schedule of Values;

7.13.1.3 Allowances shall not include professional or construction fees, general conditions, bond and insurance premiums;

7.13.1.4 Allowances shall cover CMAR's costs for unloading and handling at the Site, labor, installation costs and other expenses;

7.13.1.5 Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order in accordance with provisions of Article 10. If the actual costs are greater than the allowance, the amount of the Change Order shall reflect the difference between actual costs and the allowance plus the CMAR's fee on such difference, all as determined in accordance with Article 10.

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 State of Arizona, the Arizona Board of Regents or Arizona State University 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 State of Arizona, the Arizona Board of Regents and Arizona State University from and against all damages, liabilities, judgments, costs and expenses, including attorney’s fees and litigation expenses, incurred by or awarded against Owner, the State of Arizona, the Arizona Board of Regents or Arizona State University 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 proprietary rights or of 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 this 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, if elected by Owner, defend Owner, the State of Arizona, Arizona State University, the Arizona Board of Regents, and their regents, officers, 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 their regents, officers, agents or employees (other than CMAR, its Subcontractors and their 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.

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 construction Work, achieve Substantial Completion and Final Completion of the entire construction Work and achieve, any interim milestones for Substantial Completion and Final Completion as required by the Contract Documents. In addition, if the Owner has agreed to separately accept a
portion of the Work, CMAR agrees to achieve Substantial Completion and Final Completion of each 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 construction 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 construction Work or any portion of the construction Work that the Owner has agreed to accept separately will result in the assessment of Liquidated Damages, as provided in Article 5 of the Agreement Between Owner and Construction Manager at Risk. The per diem amount shall be paid for each and every calendar day that the CMAR shall be in default after the time stipulated in Article 5 of the Agreement Between Owner and Construction Manager for Substantial Completion or Final Completion of the entire construction Work or a portion of the construction Work. The amount is fixed and agreed upon by and between the CMAR and Owner because of the impracticity 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 If CMAR is delayed in the performance of the construction Work based upon a critical path analysis of the current Owner accepted critical path method (CPM) schedule due to acts, omissions, conditions, events, or circumstances beyond its reasonable control or prevention and due to no legal fault of its own or those for whom CMAR is responsible under the terms of the Contract Documents, the time for Substantial Completion or Final Completion, as applicable, of the entire construction Work or of any portion of the construction Work the Owner has agreed to accept separately and, to the extent applicable, any interim milestones shall be extended by written Change Order for the amount of time such acts, omissions, conditions, events, or circumstances added to the time to complete the entire construction Work, portion thereof or interim milestone, as applicable. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle CMAR to an extension of the Contract Time(s), include acts or omissions of Owner, or anyone under Owner's control, including separate contractors, changes ordered in the Project by Owner, unforeseeable Project Site conditions, wars, floods, labor disputes, unusual delay in transportation, and unusual adverse weather conditions.

The CMAR has included (_______) days of weather related delays within the Contract Time(s). If the construction Work experiences aggregate weather related delays beyond (_______) days, then subject to the requirements above in this Section 9.1.3 the CMAR shall be entitled to an extension of the Contract Time(s) as a result of such additional weather related delays and reimbursement of costs associated with the delay, including general conditions.

9.1.4 CMAR shall 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 of the Owner.

9.1.5 Notice of any delay in the construction Work shall be made in writing by the CMAR to the Design Professional and Owner immediately but in no event later than twenty-four (24) hours after discovery of the event giving rise to the delay. The CMAR shall provide additional details concerning the delay in writing to the Design Professional 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. 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 construction 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 Design Professional. 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 any other data demonstrating a delay in the critical path of the entire construction Work or the portion of the construction Work the Owner has agreed to accept separately or individual milestone. 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 construction Work as set forth in the Design Submission Documents or the Construction Documents, and any changes to the Guaranteed Maximum Price set in the GMP Setting Modification under Section 2.2.2 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 Design Professional, Owner and CMAR, stating their agreement upon all of the following:

1. The scope of the change in the of CMAR’s Pre-construction Phase Scope of Services or the scope of change in the construction Work, as applicable;
2. The amount of the adjustment, if any, to the CMAR’s Pre-construction Phase Services Fee or to the Guaranteed Maximum Price set in the GMP Setting Modification, as applicable; 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, Design Professional, 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 Design Professional and signed by Owner, directing a change in the construction 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 construction 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 the construction Work in the Change Directive and such agreement shall be effective immediately and recorded by preparation and execution of an appropriate Change Order.

10.3 MINOR CHANGES IN THE WORK
10.3.1 Design Professional may direct minor changes in the construction 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 Design Professional 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 construction Work 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 construction 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 CMAR, 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 construction 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 CMAR 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).
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 Section 10.4.1.2 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 Design Professional with a good faith estimate of the costs to perform the disputed services in accordance with Owner's or Design Professional'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 Design Professional's interpretation of the services that are to be performed.

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 If the CMAR believes that the Contract Documents affords contractual rights to the CMAR for an adjustment or for relief in respect of events arising during performance of the Work (including, without limitation, a right to a Change Orders and a right to an adjustment or relief (A) for the acts or omissions of the Owner or any other party under the control of the Owner for injury or damage to persons or property or (B) for events which affect the Guaranteed Maximum Price or Contract Time(s) or both) the CMAR shall provide the Owner and the Design Professional written notice of its request for an adjustment or for relief, 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 CMAR's request. In the absence of said times, the CMAR's request shall, if possible, be made prior to incurring any loss, cost, or expense, but in no event later than ten (10) calendar days after (i) the occurrence of the event or circumstance giving rise to the request; or (ii) the CMAR reasonably should have recognized the event or condition giving rise to the request, which ever time is sooner. The CMAR's request shall be in writing and shall include sufficient information to advise the Owner and the Design Professional of the circumstances or events giving rise to the request for adjustment or relief, the specific applicable contractual provisions, and the factual basis of such request. Any relief or adjustment afforded the CMAR shall be set forth in a written Change Order in accordance with Article 10. Failure to timely request
adjustment or relief within the time limits in or referred to in this Section 11.1.2 waives any right to
adjustment or relief.

11.2 CLAIMS, CONTROVERSIES, DISPUTE AND DISAGREEMENT 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, Design Professional and CMAR, so as to avoid or
minimize claims, controversies, disputes and disagreements. CMAR's Representative along with
the Design Professional and CMAR's Construction Superintendent shall attend weekly status
meetings with the Owner's Representative. The Design Professional shall take minutes outlining the
issues discussed, action responsibility, due dates and resolution and distribute them within forty
eight (48) hours of each meeting.

11.2.2 As to any claims, controversies, disputes and disagreements that may arise during the Project,
CMAR and Owner commit to resolving such matters 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 claims, controversies, disputes and
disagreements at the field level through discussions between CMAR's Representative and Owner's
Representative. All of CMAR's claims, controversies, disputes and disagreements shall first be
referred to the Owner Representative by written notice not more than seven (7) days from the
occurrence of the event which gives rise to the claim, controversy, dispute or disagreement or
not more than seven (7) days from the date that the CMAR knew or should have known of the event.
Unless CMAR gives written notice in accordance with these time requirements, the claim,
controversy, dispute or disagreement is irrevocably waived by CMAR.

11.2.2 If the claim, controversy, dispute or disagreement cannot be resolved through CMAR's
Representative and Owner's Representative, the CMAR's Senior Representative and Owner's Senior
Representative shall meet within 48 hours of such failure to attempt to resolve the claim,
controversy, 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 claim, controversy, dispute or disagreement. If after the
meeting the Owner Senior Representative or the CMAR Senior Representative determines in good
faith that the claim, controversy, dispute or disagreement cannot be resolved on terms satisfactory
to both parties, the CMAR of the Owner may submit the claim, controversy, 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 CMAR or the Owner may submit the claim,
controversy, dispute or disagreement to the “Claims or Controversies” process as defined in Section
3-809(C) of the Arizona Board of Regents Policy, as amended or superseded, which shall be the
parties sole remedy.

11.2.3 Any dispute, disagreement or ambiguity concerning the duties or obligations of the CMAR as
described in the Contract Documents and the duties or obligations of any other person or legal
entity providing services or materials or construction on the Project will be determined as provided in
Sections 11.2.1 and 11.2.2.

11.3 JUDICIAL PROCESS

11.3.1 CMAR, Design Professional and Owner agree that all other parties involved in any claim,
controversy, dispute or disagreement relating to the Work may be made parties to the any
process, proceeding or litigation, and to this end, CMAR, Design Professional 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. CMAR, 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, controversy, dispute or disagreement process or proceeding, 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.

11.4 CONSEQUENTIAL DAMAGES
EXCEPT AS OTHERWISE PROVIDED FOR IN THE CONTRACT DOCUMENTS, NEITHER THE OWNER NOR THE CMAR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF USE AND LOSS OF PROFITS.

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 In the event of a stoppage or suspension of the Work, the 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 As to termination for convenience, the Owner will give the CMAR ten (10) days' prior written notice of termination. In the event of termination for convenience during the pre-construction phase, Owner shall pay CMAR a pro-rated portion of the Pre-construction Phase Services Fee. If the termination date occurs during the construction phase, Owner shall pay CMAR for any construction Work executed, for cost or expense necessarily incurred in connection with any construction Work completed to date, and for reasonable costs or expenses attributable to such termination, including demobilization costs and the prorated portion of the Construction Phase Service Fee based upon the Work completed.

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; (iv) 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 termination occurs after the GMP Setting Modification is executed and if 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 reprocurement 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 Section 12.1 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 Owner's failure to pay an amount in excess of $100,000 dollars properly due 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 Guaranteed Maximum Price 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 the 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 claims, controversies, disagreements and 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 Section 3-809(C) of the Arizona Board of
Regents Policy containing procedures claims controversies, disagreements and disputes 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 or 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 Standard Form Agreement Between Owner and CMAR, 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 If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, the Owner may terminate this Agreement. If such a cancellation occurs, the Owner shall reimburse CMAR for services rendered and non-cancelable commitments made prior to the termination on the same basis as if Owner had terminated for convenience under Section 12.1.

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 Arizona Executive Order 99-4 and 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 handicap, 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 not less than 15% of the Work performed under this Agreement is performed by a small business as defined in A.R.S. § 41-1001(20). 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 Design Professional 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 any CMAR 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.

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**CMAR**

By: ___________________________  Name: ___________________________  (Printed)

Title: __________________________   Date: ___________________________

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**OWNER**

ARIZONA BOARD OF REGENTS  By: ___________________________

on behalf of  Name: ___________________________  (Printed)

ARIZONA STATE UNIVERSITY

Title: __________________________  Date: ___________________________
EXHIBIT A

TO

GENERAL CONDITIONS

FORMS OF PERFORMANCE BOND AND PAYMENT BOND

[Note: The actual forms of Performance Bond and the Payment Bond must be in the following form or in such other form as is acceptable to Owner and the surety issuing the bond.]
ARIZONA BOARD OF REGENTS

PERFORMANCE BOND

PURSUANT TO BOARD OF REGENTS POLICY 3-804D

(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 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 Arizona Board of Regents, (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 ______________________
____________________________, ASU 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 said Principal shall
faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during
the original term of said contract and any extension thereof, with or without notice to the Surety and during the life of
any guarantee or warranty required under or specified in said contract, and shall also perform and fulfill all the
undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said
contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the
obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Arizona Board of Regents
Policy Section 3-804E, 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 his or her
judgment such reasonable attorneys’ fees as 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 to be performed under said contract and does not include any pre-construction 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

Arizona State University
Rev. 08/01/2002

Construction Manager at Risk (CMAR)
General Conditions

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ARIZONA BOARD OF REGENTS
PAYMENT BOND
PURSUANT TO BOARD OF REGENTS POLICY 3-804D
(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 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 Arizona Board of Regents, (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 ________________, ASU 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 said Principal shall promptly pay all monies due to all persons supplying labor or materials to him or her subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Arizona Board of Regents Policy Section 3-804E, 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 his or her judgment such reasonable attorneys’ fees as 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 to be performed under said contract and does not include any pre-construction 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

__________________________
Surety Seal

By __________________________

Arizona State University
Rev. 08/01/2002
Construction Manager at Risk (CMAR)
General Conditions
EXHIBIT B

TO

GENERAL CONDITIONS

Form of GMP Setting Modification

GMP Setting Modification to Construction Contract

Date:

Project: Name:

ASU Project Name:

Date of Construction Contract between Owner and CMAR:

The Construction Contract for the Project identified above is modified as provided herein. CMAR and Owner hereby agree to the following:

1. Guaranteed Maximum Price (GMP) for the construction Work: __________________________ Dollars ($________________________). (General Conditions Section 2.2.2)

2. Two attached GMP schedules containing all costs and fees of the construction Work. Each is in a format agreed by CMAR and Owner. One uses an elemental systems allocation of costs and fees. The other uses a CSI allocation of costs and fees. The attached GMP schedule that will be the GMP Schedule for purposes of the Construction Documents is the one agreed to in Section 6.5 of the Construction Contract. (General Conditions Section 2.2.2)

3. The attached Schedule of Values for the construction Work using either an elemental systems or a CSI allocation of costs and fees as agreed in Section 6.5 of the Construction Contract. (General Conditions Sections 2.2.2 and 7.2.1)

4. The attached list of the GMP Setting Drawings, Specifications, Assumptions and Clarifications. (General Conditions Section 2.2.2)

5. The attached detailed CPM schedule for the entire Work. (General Conditions Sections 2.2.2, 2.5.16.2 and 2.5.16.3)

6. The percentage used to compute the Construction Phase Services Fee is ________ percent (%) of the Guaranteed Maximum Price, as the GMP may be modified from time to time in accordance with the Contract Documents.

By ________________________________
7. The daily amount payable by Owner to CMAR in accordance with the Contract Documents for general conditions for agreed to Owner-caused delays in the Project is ________________ Dollars ($______). This amount includes any amount CMAR believes necessary to cover possible general conditions claims of Subcontractors arising from agreed to Owner-caused delays. (Contract Between Owner and Construction Manager at Risk, Section 6.4).
This GMP Setting Modification will be one of the Contract Documents.
EXHIBIT C

TO

GENERAL CONDITIONS

Sample Form of GMP Cost Schedule (CSI Format)
EXHIBIT D

TO

GENERAL CONDITIONS

CMAR Pre-construction Phase Scope of Services
EXHIBIT E

TO

GENERAL CONDITIONS

ARIZONA STATE UNIVERSITY
PURCHASING and BUSINESS SERVICES
SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(REPORT TO BE SUBMITTED QUARTERLY)

1. Reporting Period: from __________ to __________

2. Report Number: __________________

3. Date Submitted: ________________

4. Contractor Name & Address: ____________________________

5. ASU Project: /Number/Signature Date:
   Name: ____________________________________________
   Number: __________________________________________
   Signature Date: ____________________________________

6. Dollar Value of Contract: ____________

7. Total Payment from University: ____________

8. Subcontractor and Payment:
   ____________________________________________ $ ____________
   ____________________________________________ $ ____________
   ____________________________________________ $ ____________
   ____________________________________________ $ ____________

9. Type Name and Title of the Individual Administering Contract:
   Signature: ____________________________ Telephone Number (____) ______

10. Type Name and Title of the Approving Officer Signature:

GENERAL INSTRUCTIONS

Item 1 The report shall be submitted by the 10th day of the month following close of the reporting period. Reporting periods are: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

Item 2 The initial report shall be identified as Report No. 1. Reports shall be consecutively numbered.

Item 3 Date report is completed.

Item 4 Enter information on contractor submitting report.

Item 5 Enter information on project.

Item 6 Enter the estimated dollar value of the contract. Modify for changes as they occur.
Item 7  Enter cumulative payments received from ASU.
Item 8  Enter name and address of subcontractor and cumulative payments received.
Item 9  Enter name and title of company individual responsible for administering contract. Signature and telephone number required.
Item 10  The approving officer shall be the senior official of the company responsible for contract performance

NOTE: SUBMIT REPORT TO THE BUYER IN PURCHASING