

**DOUGLAS COUNTY SCHOOL DISTRICT  
CONSTRUCTION MANAGER AT RISK (CMAR)  
REQUEST FOR PROPOSALS**

**Date:** September 1, 2010

**Project Identification**

**Project Number:** 090110FMP – 1a

**Project Name:** **Gardnerville Elementary School Modernization**  
1290 Toler Avenue, in Gardnerville, Nevada, 89423

**Piñon Hills Elementary School Modernization**  
1479 Stephanie Way, in Minden, Nevada, 89423

**Owner**

DOUGLAS COUNTY SCHOOL DISTRICT  
1638 MONO AVENUE  
MINDEN, NEVADA 89423

**RFQ/RFP Contact:** Gina Steinman, Facilities Bookkeeper  
1638 Mono Avenue, Minden, Nevada  
Phone/Fax: (775) 782-5131, Ext. 1609 / (775) 782-3162  
E-mail: FacilitiesPlan@dcsd.k12.nv.us

All questions or comments pertaining to the RFP shall be directed to the contact listed above. Applicants are instructed not to contact anyone else associated with the District. Douglas County School District reserves the right to disqualify applicants from further consideration who violate this request. Replies issued in writing will be in the form of addenda and offered via email. Documents pertaining to this process may also be posted on the District's website as time allows.

**Proposal Delivery Deadline**

Proposals shall be delivered in a sealed envelope with the CMAR firm name and return address noted in the upper left-hand corner, and the Project Name listed on the outside of the envelope as shown below:

**REQUEST FOR PROPOSAL FOR:  
Construction Manager at Risk Services, Phase 1a  
RFP #: 090110FMP – 1a**

Bidders shall deliver one (1) copy labeled "Master", and five (5) copies to the Douglas County School District Office in Minden, Nevada (listed above) no later than:

**Submission Due Date and Time:** September 15, 2010 at 2:00pm (PST)





- E. Builder's Risk Insurance Cost (attach quote from insurance provider) \$ \_\_\_\_\_
- F. Total of Items C through E above \$ \_\_\_\_\_

**ARTICLE 6: PROPOSED FEES AND ADDITIONAL SUBMITTAL REQUIREMENTS**

- A. CMAR's Proposed Fee (for Pre-Construction Services) \$ \_\_\_\_\_
- B. CMAR's Proposed Construction Phase Fee (Percentage) \_\_\_\_\_%
- C. Proposed Fee % (from above) x Estimated Construction Budget (from RFQ) \$ \_\_\_\_\_
- D. Total of Item's No. A and C above \$ \_\_\_\_\_

The CMAR's Proposed Construction Phase Fee percentage listed above is to be utilized in determining the CMAR's Fee listed under Article 1, Item No. 3 in the CMAR GMP Proposal and is defined in the CMAR General Conditions of the Contract (Section 7.2, Payment Terms and Definitions).

**ARTICLE 7: ADDITIONAL SUBMITTAL REQUIREMENTS**

The information requested below may appear duplicative of the items requested in the Statement's of Qualifications previously submitted by the eligible CMAR firms in connection with this process, but the intent of Douglas County School District is to ensure process compliance with the requirements of NRS 338.169. We ask that the CMAR firms expand on the information contained within their SOQ's, including the exact requested information below.

Responses must be limited to a maximum of 20 single sided pages or 10 double sided pages.

- A. *Team Qualifications*- Complete Appendix A: Team Outline, including the resumes of any staff members to be utilized for these projects. Additionally, show specific, detailed past assignments of each team member and describe the intended use of each team member from the start of preconstruction services to the close of construction services, as well as their individual scope of work associated with this project. Describe their familiarity with any recent project(s) of similar type and scope and their understanding and familiarity of the CMAR process. Furthermore, please provide a direct correlation of team members who have worked together previously, and what capacities. The Team organization should include at a minimum the following:
  - 1) Director or Principal in Charge
  - 2) Project Manager for both Pre-Construction and Construction phases, if different
  - 3) Project Superintendant
  - 4) Cost Estimator
  - 5) Scheduler
- B. *Team approach*- Please describe in as much detail as possible your firm's team approach to the following:
  - 1) Proposed Plan for Pre-Construction Services
  - 2) Proposed Plan for Construction Services
  - 3) Proposed Plan for Selection of Sub-consultants
  - 4) The Firm's process and methodology of interaction with the District personnel. Provide as much detail as possible.
  - 5) The Firm's process and methodology of interaction with the Architect of Record. Provide as much detail as possible.
- C. *Safety Plan*- It is important to the District that the project(s) site and facilities are safe and secure during the construction. This would include not only the construction trades but the

ongoing school activities. Describe how you have planned and implemented a safety plan on other school or public related projects, and the record-keeping used for such purposes. Please provide specific examples of the records used on previous projects.

- D. *Cost Estimation and Life Cycle Analysis:* Describe the approach used to determine acceptable equipment and materials selection, including the inclusion of the life cycle analysis for such materials where applicable, and problem solving techniques used to select the right product or material for the project.
- E. *Modified Insurance Requirements* – Please provide a statement indicating the firm’s EMR rate for Workers’ Compensation Insurance. Also, provide detailed information on CMAR’s willingness and ability to provide a Builder’s Risk Insurance policy as part of the contract requirements.

**ARTICLE 8: PAYMENT SCHEDULE**

Payment for pre-construction services will be made in accordance with the following schedule:

<u>Phase of Work</u>	<u>Payment</u>
Design Development Phase	20% of Total
50% Construction Documents	20% of Total
100% Construction Documents	30% of Total
Issuance of GMP Proposal	20% of Total
Issuance of Final CMAR Review Comments	10% of Total

Additional information with regard to payment terms can be found in Section 7.2, Payment Terms and Definitions the General Conditions Document.

**ARTICLE 9: CMAR PRE-CONSTRUCTION SERVICES MEETING INTERVAL**

The CMAR will be expected to attend and participate in ongoing regularly scheduled design progress review meetings with the Architect and the Owner for the duration of the design process (duration as listed in the Request for Qualifications (RFQ) and CMAR Services as listed in the Owner-CMAR Pre-Construction Agreement and the RFQ).

**ARTICLE 10: CMAR SELECTION PROCESS**

The CMAR selection process will be conducted in accordance with Nevada Administrative Code Section 338.169. The top 2 or 3 applicants receiving the highest scores based on the criteria listed below (excluding the interview) will be interviewed.

**ARTICLE 11: CMAR EVALUATION AND SELECTION CRITERIA**

Evaluations will be based on the information requested and provided in the response to the RFQ and the CMAR Fee Proposal. All proposers understand and accept that the weighted selection criteria are typically both subjective and objective by nature and that the weight factor of each category is intended to define its relative importance. The final ranking of each firm will be based on a combined evaluation of all evaluation criteria (see below). By submitting a Statement of Qualifications and a Fee Proposal, the proposer acknowledges that Douglas County Schools has sole and absolute discretion in determining the selection criteria and in evaluating the proposer based on the selection criteria in each category.

**ARTICLE 12: FINAL SELECTION CRITERIA AND WEIGHING**

Proposed Fee Arrangement**	10 points
Team Qualifications	10 points
Team Approach	15 points
Pre-Construction Services Plan	10 points
Construction Services Plan	10 points
Sub-consultant Selection Plan	5 points
Safety Program	15 points
Interview	75 points
Total Possible Points	150 points

\*\*The Proposed Fee Arrangement will be evaluated and scored based on the total fees listed in Articles 1 through 6 of this document. Scores will be calculated by dividing the lowest total proposed fee received from all the applicants, by the applicant’s total proposed fee, multiplied by the total possible points (10 points).

**ARTICLE 13: CMAR SIGNATURE**

**Construction Manager at Risk**

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CMAR Firm Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

# OWNER CMAR PRE-CONSTRUCTION SERVICES AGREEMENT

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between the Douglas County School District Board of Education (hereinafter collectively referred to as the "Owner"), acting by and through: DOUGLAS COUNTY SCHOOL DISTRICT, 1638 MONO AVENUE, MINDEN, NEVADA 89423 (775) 782-5131 and the Construction Manager at Risk, hereinafter referred to as "CMAR": {Insert CMAR's Name Address City, State Zip Code Phone}

## ARTICLE 1

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

### Project Identification

**Project Name:** **Gardnerville Elementary Modernization and New Construction**  
1290 Toler Avenue, in Gardnerville, Nevada

**Piñon Hills Elementary Modernization and New Construction**  
1479 Stephanie Way, in Minden, Nevada

## ARTICLE 2

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

CMAR Pre-Construction Services Fee Amount: \$ \_\_\_\_\_

## ARTICLE 3

Time is of the essence in the performance of this Agreement and the CMAR agrees to complete all Pre-Construction services and work within the time schedule established in the incorporated documents. Failure to comply with the time schedule shall constitute a material breach of this Agreement.

## ARTICLE 4

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

1. Participation in regularly scheduled design progress review meetings with the Project Architect of Record and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost, construction duration, sequence of construction, and construction means and methods.
2. Development of review comments, suggestions, and cost estimates at each of the stipulated phases of design, as proposed in the Process Schedule Document and Owner Scope of Professional Services for a CMAR Process.
3. Assistance with identifying and reconciling differences between the Consultant's Scope of Construction and the CMAR's cost estimates.
4. Development of constructability and value engineering suggestions at each phase of design.
5. Development of potential bidders lists and coordination of input from subcontractors with regard to each of the items previously described in this section (Article 4).
6. Distribution of pre-bid conferences and bid openings, and assistance with selection of the best bids in each of

documents to potential bidders, coordination category.

7. Development of a GMP Proposal based on bids obtained from all necessary subcontractors after reviewing and coordinating the bid results with the Owner.
8. Development of final CMAR constructability and value engineering suggestions.
9. Development of CMAR Pre-construction binder(s).
10. Work as defined in Owner Scope of Professional Services for a CMAR Process.

#### **ARTICLE 5**

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

1. CMAR Request for Qualifications
2. CMAR Request for Proposal with General Conditions and Fee Worksheet
3. Owner CMAR General Conditions of the Contract
4. State Public Works Board Adopted Standards (Latest Version)
5. Owner Scope of Professional Services for a CMAR Process
6. Process Schedule Document

#### **ARTICLE 6**

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) as may apply to this Agreement and to the work performed under this Agreement and agrees to comply with all such applicable portions of the NRS and the NAC.

#### **ARTICLE 7**

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

#### **ARTICLE 8**

Execution of this Agreement by each party shall constitute the representation by each party that he has examined the contents of all the referenced documents listed above, including the Owner CMAR General Conditions of the Contract that he has read and understands the same, and specifically agrees to be bound thereby.

#### **ARTICLE 9**

This Agreement shall be construed and interpreted according to the laws of the State of Nevada. Any action brought by either party arising out of or related to the Agreement shall be brought in a court located in Douglas County, Nevada.

#### **ARTICLE 10**

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

#### **ARTICLE 11**

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Consultant, the Sub-Consultants, and the agents and employees of any of them from and against all claims, damages,

losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of this Agreement, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

## **ARTICLE 12**

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

Commercial General Liability: The coverage must include: contractual liability, premise operations, personal injury, products and completed operation coverage. Explosion, collapse and underground coverage shall not be excluded. For construction contracts between \$1,000,001 and up to \$5,000,000 the limits of liability required will be: Primary: \$2,000,000 per occurrence and \$4,000,000 aggregate. Umbrella: \$5,000,000 per occurrence / aggregate and must be project specific.

Builder's Risk Insurance: The limit will be based on the value of the project.

### Umbrella or Excess Liability Insurance:

- May be used to achieve the above minimum liability limits.
- Shall be endorsed to state it is as broad as primary policies.
- Cross-Liability: All required liability policies shall provide cross-liability coverage.

Automobile Liability: For construction projects exceeding \$1,000,000 the minimum limit of liability required will be a Combined Single Limit (CSL) of \$1,000,000 per occurrence.

Worker's Compensation Statutory Coverage: Employers Liability Limits shall be at least \$100,000 per occurrence and for occupational disease. Workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from RMS Department. All contractors providing services shall provide proof of Workers' Compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required.

Professional Liability: The limit of liability shall be \$3,000,000 project specific

Deductibles and Self-Insured Retentions: Insurance maintained by contractors shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Board of Regents of the Nevada System of Higher Education on behalf of CSN. Such approval shall not relieve contractors from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by the Board of Regents of the Nevada System of Higher Education on behalf of CSN. Other Requirements:

The Douglas County School District Board of Education must be named as an Additional Named Insured on the General Liability policy. ISO endorsement CG 20 10 11 85 shall be used for this purpose. Excess liability policies and professional

liability policies shall also be endorsed to make the Douglas County School District Board of Education an additional insured.

- Subrogation must be waived against the Douglas County School District Board of Education on workers' compensation, liability and property policies.
- Douglas County School District Board of Education shall be named as loss payee as respects their interest in any property that the contractors have an obligation to insure on behalf of the Douglas County School District Board of Education.
- The Risk Management Department at the Douglas County School District shall be given 60 days written notice of policy cancellation or change in insurance coverage except 10 days for non-payment of premium.
- Each insurance policy shall be: 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and 2) Currently rated by A.M. Best as A - IX or better. • Any insurance or self-insurance available to the Douglas County School District Board of Education shall be in excess of and non-contributing with any insurance required from third parties insurance policies shall apply on a primary basis

### **ARTICLE 13**

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

### **ARTICLE 14**

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

### **ARTICLE 15**

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement without cause upon seven (7) calendar days written notice of termination. Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

### **ARTICLE 16**

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

### **ARTICLE 17**

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard

commercial supplies or raw materials. Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

**ARTICLE 18**

The parties agree that the CMAR is an independent contractor and that this Agreement is entered into in accordance with Nevada Revised Statutes Section 284.173, which statute in pertinent part provides that the CMAR is not a State employee and that the CMAR will not be entitled to any State insurance or benefits.

In witness whereof, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

**The Douglas County School District Board of Education**

\_\_\_\_\_ **Date** \_\_\_\_\_

**Construction Manager at Risk (CMAR)**  
**Firm Name:**

\_\_\_\_\_ **Date** \_\_\_\_\_

**Douglas County School District**  
**CMAR GMP PROPOSAL**  
 (Based on 100% Construction Documents)

**Date:** September 1, 2010

**Project Identification**

**Project Number:** 090110FMP-1a-GMP

**Project Name:** **Gardnerville Elementary School Modernization**  
 1290 Toler Avenue, in Gardnerville, Nevada, 89423

**Piñon Hills Elementary School Modernization**  
 1479 Stephanie Way, in Minden, Nevada, 89423

The CMAR GMP Proposal shall be submitted by the CMAR at the following location, date, and time:

Douglas County School District – Administration Building  
 1638 MONO AVENUE, MINDEN, NEVADA 89030  
 (775) 782-5131

GMP Proposal Due Date: xx-xx-xx (TBD)  
 Time Due: xx:00 p.m. (local time) (TBD)

**ARTICLE 1 - GUARANTEED MAXIMUM PRICE (GMP)**

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

- 1) Cost of the Work (excluding General Conditions) \_\_\_\_\_
- 2) CMAR's General Conditions \_\_\_\_\_
- 3) CMAR's Fee \_\_\_\_\_
- 4) CMAR's Contingency \_\_\_\_\_
- 5) Owner's Contingency (Value by Owner) \_\_\_\_\_
- 6) Total Guaranteed Maximum Price \_\_\_\_\_

**ARTICLE 2 - SPLIT OF POTENTIAL SAVINGS**

	<u>Owner</u>	<u>CMAR</u>
Percentage Split of 'Cost of Work' Savings	50%	50%
Percentage Split of CMAR's Contingency Savings	50%	50%

**ARTICLE 3 - CONTRACT TIME**

Contract Time: \_\_\_\_\_ Calendar Days (TBD)

Liquidated Damages: \$ 1,500.00 per day

**ARTICLE 4 - ADDENDA ACKNOWLEDGEMENT**

Receipt of the following addenda acknowledged:

Addenda Numbered: \_\_\_\_\_

**ARTICLE 5 - GMP PROPOSAL AFFIRMATION**

In compliance with the CMAR GMP Proposal Instructions, the Contract Documents, and the drawings and specifications for the Project, the undersigned CMAR, being duly licensed to perform such work by the Nevada State Contractor's Board, and being thoroughly familiar with all local conditions affecting the cost of the Project, having carefully examined the site, the Contract Documents, drawings, specifications, and any addenda thereto, the CMAR proposes to provide, and to furnish for the costs set forth in Article 1 (Guaranteed Maximum Price), all labor and material, tools, utilities, transportation, equipment, and services required to perform and to complete in a workmanlike manner all of the Work from the date of the Notice to Proceed, within the established Contract Time, subject to liquidated damages for any excess calendar days as established under Article 3 (Contract Time). By affixing his signature, the CMAR certifies that this GMP Proposal is submitted in accordance with all of the provisions contained in the CMAR GMP Proposal Instructions which shall be deemed applicable to the guaranteed maximum price proposed herein.

**ARTICLE 6 - CMAR SIGNATURE Construction Manager at Risk**

CMAR (Firm Name)

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

Print \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_





## CMAR GMP PROPOSAL INSTRUCTIONS

### SECTION 1 – DEFINITIONS

- 1.1 CMAR: The firm or organization submitting a GMP Proposal to the Douglas County School District in response to a GMP Request for Proposals (RFP). The term CMAR means the Construction Manager at Risk, or authorized Representatives.
- 1.2 Work: The term “Work” includes all labor, materials, services, equipment, tools transportation, power, water, permanent and temporary utilities, utility connections, provisions for safety, and all other incidental items necessary to produce the finished construction as described by the 100% Construction Documents.
- 1.3 GMP Delivery Date: The day established in the CMAR GMP Request for Proposals for the submission of the proposal to Douglas County School District.
- 1.4 GMP Delivery Time: The time established in the CMAR GMP Request for Proposals for the submission of the proposal to Douglas County School District.
- 1.5 Contract Documents: The Contract Documents consist of the CMAR Request for Proposals, the Owner-CMAR Construction Agreement document, the Performance and Payment Bond Forms, the CMAR General Conditions of the Contract, the Supplemental General Conditions of the Contract (when applicable), the 100% Construction Documents (drawings and specifications), the Prevailing Wage Rates of the project, any Addenda issued, and these CMAR GMP Proposal Instructions.
- 1.6 Owner: The Owner is the Douglas County School District for purposes of this project.
- 1.7 Project Architect: The Project Architect is the person or firm identified as such in the Request for Proposals, and shall include his/her authorized representatives. If the Douglas County School District has not yet named the Project Architect in the Request for Proposals, this information would then be clarified in the CMAR GMP Proposal Request.
- 1.8 Joint Venture GMP: A GMP submitted by two or more contractors who propose to perform the work jointly, upon approval of the Owner.
- 1.9 CMAR Acknowledgement: The CMAR acknowledges that the GMP Proposal is based on the Contract Documents listed in the Owner-CMAR Construction Agreement.
- 1.10 Owner’s Contingency: The Owner’s contingency belongs solely to the Owner for the purpose of allocation towards stipulated additional work (as itemized in an executed Change Order). Any portion of the Owner’s contingency remaining upon completion of the Work belongs to the Owner.
- 1.11 Owner Oversight of CMAR Bidding Procedures: The CMAR acknowledges all of the requirements listed in Section 3.16 (Owner Oversight of CMAR Bidding Procedures) of the CMAR General Conditions of the Contract.

## **SECTION 2 – QUALIFICATIONS OF CMAR AND SUBCONTRACTORS**

- 2.1 The CMAR shall be properly licensed by the Nevada State Contractors Board prior to responding to this Request for Proposals.
- 2.2 The CMAR shall ensure that none of the subcontractors utilized in determining and submitting the CMAR GMP Proposal have been disqualified under the State Public Works Board pre-qualification program.
- 2.3 The CMAR shall ensure that all sub-bids utilized in preparing and submitting the CMAR GMP Proposal have been obtained from subcontractors properly licensed by the Nevada State Contractors Board to perform their portion of the Work. A subcontractor named by the CMAR who is not properly licensed for that portion of the Work shall be deemed unacceptable. No additional compensation shall be paid to the CMAR if the CMAR must substitute a properly licensed subcontractor in lieu of an improperly licensed subcontractor.
- 2.4 Any CMAR proposing to submit a Joint Venture Proposal shall obtain the written approval the Nevada State Contractors Board prior to submitting such a proposal.
- 2.5 The CMAR shall demonstrate to the satisfaction of the Owner that he has adequate previous experience in any work that the CMAR firm intends to self-perform and shall also provide evidence that the proposed cost for such work is lower than other bids received for the work.

## **SECTION 3 – PREPARATION OF GMP PROPOSAL**

- 3.1 The CMAR is solely responsible for the proper, complete and accurate preparation of the GMP Proposal. The failure of the CMAR to comply with these CMAR GMP Proposal Instructions or with the requirements of the other Contract Documents may result in the rejection of the GMP Proposal by the Owner.
- 3.2 The GMP Proposal shall be submitted on the GMP Proposal Form provided by the Owner.
- 3.3 Where indicated on the GMP Proposal Form, the CMAR shall:
  - a. Print or type the firm name and address.
  - b. List the number of each Addendum received and being acknowledged in the Proposal.

- c. Clearly and legibly print or type the amount of the Guaranteed Maximum Price (GMP).
- d. Sign and date the GMP Proposal form where indicated. Print or type the title(s) of the authorized representative(s) signing the form. The signature(s) must be of an authorized officer of the firm, capable and authorized to commit the firm to carrying out the details of the Contract.
- e. The CMAR shall submit a printed or typed list naming each first tier subcontractor who will provide labor or a portion of the Work to the CMAR and a description of the portion of work each subcontractor will complete, and the license number of their Nevada State Contractors License, in the following methods:
  - I. 5% Listing: List each subcontractor who will perform a portion of the work representing 5% (or \$150,000, whichever is greater) of the total CMAR GMP Proposal.
  - II. 1% Listing: List each subcontractor who will perform a portion of the work representing 1% (or \$30,000, whichever is greater) of the total CMAR GMP Proposal.
  - III. 1% Listing of CMAR Self-Performed Work: Provide a list of any portion of the Work exceeding 1% (or \$30,000, whichever is greater) of the total CMAR GMP Proposal that the CMAR intends to self-perform.
- f. The CMAR will not substitute a subcontractor who is named in the GMP Proposal unless such substitution complies with Nevada Revised Statutes Section 338.141, and with the written pre-approval of the Owner.

3.4 Within 48 hours of receipt of notification of Intent to Award a Contract, the CMAR shall submit to the Owner a final and complete listing of ALL subcontractors and sub-subcontractors who will participate in any portion of the work, along with their Nevada State Contractors License number, and a description of the work they will perform. The list shall also include any work that the CMAR intends to self-perform. Should the 48 hour period elapse on a weekend day, the required list may be submitted on the following Monday. After the required list is submitted, should the CMAR decide for any reason to substitute a subcontractor for work that is listed to be self-performed, the CMAR shall provide a written explanation of why the subcontractor was not utilized in the original GMP Proposal and why the substitution is in the best interests of the Owner. The Owner reserves the right to approve or deny such requests.

3.5 The GMP shall be based on providing the materials and equipment specified in the Contract Documents. The determination of whether material or equipment is equal to that specified is the responsibility of the Project Architect or Engineer, and the CMAR

agrees to abide with that decision if the GMP Proposal is accepted. The CMAR shall not prepare a GMP Proposal in anticipation of substitutions to specified materials or equipment being accepted.

- 3.6 Materials or equipment for which there is no installation procedure noted in the Contract Documents shall be installed in conformance with manufacturer's written instructions.
- 3.7 The CMAR may request interpretations or clarification of the 100% Construction Documents at any time prior to 72 hours before the GMP Delivery Date and Time by making a written request to the Architect, who may then issue a written addenda to the CMAR prior to stipulated GMP Proposal Delivery Date and Time. No interpretation, clarification or change in the 10% Construction Documents will be binding on the Owner unless it is included in an addendum. It is the sole responsibility of the CMAR to ensure the receipt of all Addenda issued, and shall acknowledge the receipt of each Addenda on the GMP Proposal Form.
- 3.8 The CMAR shall be solely responsible to be fully informed of all conditions relating to the Contract Documents and Work prior to submitting the GMP Proposal.
- 3.9 All applicable State Laws, County Ordinances, and the rules and regulations of local and State authorities having jurisdiction over the Work, shall apply to the Work as if repeated in full in the Contract Documents. The CMAR's attention is directed to those portions of the Contract Documents which govern insurance, wage rates, allowances, equal employment opportunity, inspection and testing of materials, liquidated damages, and contract time.
- 3.10 The prevailing wage rates as established by the Office of the Nevada Labor Commissioner shall be paid on the project. The applicable wage rates must be posted at the site of the Project in a place generally visible to the laborers.

#### **SECTION 4 – JOINT VENTURE**

- 4.1 In the event that GMP Proposal is made by two or more firms as a joint venture, such proposals shall be submitted in strict accordance with Nevada Revised Statutes Section 624.290, State Contractor License Law, and the Rules and Regulations of the State Contractors Board.
- 4.2 All proposals submitted as a Joint Venture must be signed by an authorized officer of each firm to the joint venture and shall include the Nevada State Contractors License number of each party to the joint venture.

## **SECTION 5 – SUBMISSION OF GMP PROPOSAL**

- 5.1 The proposal shall consist of the properly completed GMP Proposal Form and the required subcontractor listing(s).
- 5.2 In submitting a GMP Proposal, the CMAR represents that:
  - a. He has carefully checked the GMP Proposal and will enter into the Owner-CMAR Construction Agreement in accordance with its terms and conditions and in accordance with the terms and conditions of the other contract documents.
  - b. The GMP Proposal is genuine and not a sham or collusive bid, or made in the interest of or behalf of any person or organization other than the CMAR.
  - c. He has read and understands the Contract Documents, and is thoroughly familiar with all requirements of the Work.
  - d. He has informed himself fully of the conditions relating to the construction of the Project. Failure to so will not relieve the CMAR of his/her obligation to furnish all material and labor necessary to carry out the Work in accordance with the Contract Documents.
  - e. He has informed himself fully that his/her Nevada State Contractors License is acceptable to the Nevada State Contractors Board for the type of work covered by the GMP Proposal.
- 5.3 The right is reserved by the Owner to reject the GMP Proposal should it be deemed not in the best interest for the Douglas County School District.

# OWNER-CMAR CONSTRUCTION SERVICES AGREEMENT

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between the Douglas County School District Board of Education (hereinafter collectively referred to as the "Owner"), acting by and through: DOUGLAS COUNTY SCHOOL DISTRICT, 1638 MONO AVENUE, MINDEN, NEVADA 89423 (775) 782-5131 and the Construction Manager at Risk, hereinafter referred to as "CMAR": {Insert CMAR's Name Address City, State Zip Code Phone}

## ARTICLE 1

The CMAR agrees to provide all labor materials, equipment, tools and services necessary, and to do everything required by this Agreement and the other Contract Documents, to complete all Work on the Project:

**Project Name:** **Gardnerville Elementary Modernization and New Construction**  
1290 Toler Avenue, in Gardnerville, Nevada

**Piñon Hills Elementary Modernization and New Construction**  
1479 Stephanie Way, in Minden, Nevada

## ARTICLE 2

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

Calendar Days: (TBD)

## ARTICLE 3

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

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

- 1) Cost of the Work (excluding General Conditions) \_\_\_\_\_
- 2) CMAR's General Conditions \_\_\_\_\_
- 3) CMAR's Fee \_\_\_\_\_
- 4) CMAR's Contingency \_\_\_\_\_
- 5) Owner's Contingency (Value by Owner)
- 6) Total Guaranteed Maximum Price \_\_\_\_\_

## ARTICLE 4

	<u>Owner</u>	<u>CMAR</u>
Percentage Split of GMP Savings	50%	50%
Percentage Split of Contingency Savings	50%	50%

## **ARTICLE 5**

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

Liquidated Damages: \$ 1500.00 per day

## **ARTICLE 6**

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

- 1 CMAR GMP Proposal
- 2 CMAR General Conditions of the Contract
- 3 Supplemental CMAR General Conditions (when applicable)
- 4 Wage Rates
- 5 Performance and Payment Bonds
- 6 Drawings (dated xx-xx-xx)
- 7 Specifications (dated xx-xx-xx)
- 8 Addenda
- 9 Change Orders

## **ARTICLE 7**

Upon final completion of the Work and upon acceptance of the completed Project by the Owner, the Owner may file a Notice of Completion and will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for Guarantees, Warranties, and Insurance shall continue to apply.

## **ARTICLE 8**

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

## **ARTICLE 9**

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

## **ARTICLE 10**

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

#### **ARTICLE 11**

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

#### **ARTICLE 12**

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

#### **ARTICLE 13**

The CMAR agrees to defend, indemnify and hold harmless the Owner, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Agreement by the CMAR or the CMAR's agents or employees.

The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.

#### **ARTICLE 14**

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

#### **ARTICLE 15**

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

#### **ARTICLE 16**

The parties agree that the CMAR is an independent contractor and that this Agreement is entered into in accordance with Nevada Revised Statutes Section 284.173.

#### **ARTICLE 17**

In connection with the performance of the Work, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Any violation of such provision by the CMAR shall constitute a material breach of contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Douglas County School District, by:

\_\_\_\_\_  
President  
Board of Education

STATE OF NEVADA        )  
                                  ) SS:  
COUNTY OF DOUGLAS)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before the undersigned, a Notary Public in and for the County of Douglas, State of Nevada, personally appeared before me \_\_\_\_\_, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
CONSTRUCTION MANAGER AT RISK

STATE OF NEVADA        )  
                                  ) SS:  
COUNTY OF DOUGLAS)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before the undersigned, a Notary Public in and for the County of Douglas, State of Nevada, personally appeared before me \_\_\_\_\_, Professional, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

\_\_\_\_\_  
NOTARY PUBLIC

Douglas County School District

**CMAR GENERAL CONDITIONS OF THE CONTRACT**

August 2010

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## **SECTION 1: DEFINITIONS, RULES & REGULATIONS**

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

## 1.11 SUBMITTALS AND SHOP DRAWINGS

- 1.11.1 Submittals and shop drawings are drawings, diagrams, illustrations, performance charts, brochures, samples, and other data which are prepared by the CMAR or any Subcontractor, manufacturer, supplier, or distributor, which illustrate some portion of the Work.
- 1.11.2 Samples are physical examples furnished by the CMAR to illustrate materials, equipment, finishes, or workmanship, and to establish standards by which the Work will be judged.

## 1.12 RULES AND REGULATIONS

- 1.12.1 No elected or appointed official or employee of Douglas County School District, nor any consultant retained for or related to the Project shall have any personal financial interest, direct or indirect, in this Contract, or in any other contract relating to the Project.
- 1.12.2 The CMAR shall comply with all applicable portions of the Nevada Revised Statutes.
- 1.12.3 The CMAR shall comply with Nevada Revised Statutes Section 338.125 (which pertains primarily to discrimination against employees and applicants because of race, creed, color, national origin, sex, or age). A violation of any provision contained in Nevada Revised Statutes Section 338.125 shall constitute a material breach of contract.

## SECTION 2: THE CONTRACT DOCUMENTS

### 2.1 INTENT AND INTERPRETATION

- 2.1.1 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. In the event that the terms, provisions, conditions, specifications, or requirements contained in one contract document should conflict with those contained in another contract document, then such conflict shall be resolved in accordance with the following order of precedence:
  - A. Owner-CMAR Construction Agreement
  - B. Supplemental CMAR General Conditions
  - C. CMAR General Conditions of the Contract
  - D. Change Orders
  - E. Addenda to Specifications
  - F. Addenda to Drawings
  - G. Specifications
  - H. Drawings
- 2.1.2 In the event of an inconsistency between or within any of the Contract Documents or between any of the applicable codes, the better quality or greater quantity of work shall be provided, at no additional cost to the Owner.
- 2.1.3 Specifications shall take precedence over notes on drawings. Large scale drawings shall take precedence over smaller scale drawings.
- 2.1.4 The Contract Documents are intended to include and require all items which are necessary for the proper execution and completion of the Work.
- 2.1.5 Interpretations of the Drawings and Specifications and their intent, which are necessary to the proper

execution and completion of the Work will be made by the Architect. Words which have well known technical or trade meanings are to be interpreted in accordance with such recognized meanings.

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

## 2.2 EXISTING CONDITIONS

- 2.2.1 It is the CMAR's responsibility to ascertain the existence of any existing conditions that may affect the cost of the proposed Work which could have been discovered by reasonable examination of the site.
- 2.2.2 No additional costs shall be allowed to the CMAR for existing conditions which could have been discovered by reasonable examination of the site.
- 2.2.3 Existing improvements visible at the job site, for which no specific disposition is made in the Contract Documents, but which could reasonably be assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the CMAR after written notification is given to the Owner.
- 2.2.4 The geotechnical report issued with the Contract Documents is provided for the CMAR's information and is not a Contract Document. The Owner does not guarantee the accuracy or completeness of the report and shall not be liable for any additional work or cost arising out of conclusions reached by the CMAR based upon the geotechnical report. The CMAR assumes all responsibility for any conclusions reached by the CMAR based on the geotechnical report.

## 2.3 REQUESTS FOR INFORMATION

- 2.3.1 No work shall be performed by the CMAR without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents. The CMAR shall, upon discovering any discrepancy, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to the Architect. The Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to the CMAR, but will take such action only after consultation with the Owner. Until such written instructions are given, any work done by the CMAR, either directly or indirectly relating to such discrepancy, conflict, or inconsistency will be at his own risk, and he shall bear all costs arising there from. The CMAR shall maintain a sequential log of all RFI's.
- 2.3.2 The CMAR shall report immediately to the Owner and the Architect any discrepancy, conflict, or inconsistency that he may discover, or should have discovered, in the Contract Documents. If the CMAR performs any work contrary to the Contract Documents, he shall be solely responsible and shall bear all costs attributable thereto.
- 2.3.3 Requests for Information shall be limited to one specific issue or group of related issues and shall not address multiple issues. The Architect will review and respond to RFI's within 10 days from the date that the RFI is received by the Architect. RFI's shall be issued by the CMAR to the Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Architect.

## 2.4 SUBMITTALS AND SHOP DRAWINGS

- 2.4.1 The CMAR shall review, stamp with his approval, and submit to the Architect with reasonable promptness and in an orderly sequence so as to cause no delay in the Work, all submittals and/or shop drawings required by the Contract Documents or subsequently required by the Architect.
- 2.4.2 The CMAR's schedule shall include reasonable and orderly dates for issuance of all major submittals, to allow for reasonable notice and staged delivery of submittals to the Architect, as required in Section 5.7.
- 2.4.3 The CMAR's submittals shall provide specific written notice of any deviation from the requirements of the Contract Documents. Failure to specifically identify such deviations shall be adequate grounds for withholding approval of the submittal or voiding any prior acceptance or approval of the submittal.
- 2.4.4 Submittals shall be properly identified as specified, or as the Architect may require. By approving and issuing submittals, the CMAR thereby represents that he has determined and has verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each submittal with the requirements of the Contract Documents.
- 2.4.5 The Architect will review submittals within 14 days from the date that they are received for conformance with the Contract Documents. The review of a separate item shall not indicate approval of an assembly in which the item functions.
- 2.4.6 The review and approval of submittals by the Architect shall not relieve the CMAR of responsibility for any deviation from the requirements of the Contract Documents, nor shall review by the Architect relieve the CMAR from responsibility for errors or omissions in the submittals.
- 2.4.7 The CMAR shall correct submittals as required by the Architect and shall resubmit the required number of corrected copies of submittals until the Architect indicates that no further re-submittals are required. The CMAR shall identify in writing all revisions made, in addition to identifying the corrections requested by the Architect on previous submittals.
- 2.4.8 The number of submittals provided and approved shall include one set for use by the Owner.
- 2.4.9 None of the Work requiring submittals or shop drawings shall commence until the associated submittals have been reviewed and approved by the Architect.

## 2.5 SUBSTITUTIONS

- 2.5.1 The GMP and the Work shall be based on the products specified in the drawings and specifications. The specified products have been used in the design of the Project and in the preparation of the Drawings and Specifications, and as such establish minimum standards of function, dimension, appearance, and quality necessary for the Project. Equivalent products of other manufacturers may be acceptable, if, in the judgment of the Owner and the Architect, they meet the standards of the Contract Documents. The burden of proof of equality rests with the CMAR. The CMAR shall submit any requests for substitutions in writing to the Owner and the Architect within the time specified in Section 2.5.2. Submittals and shop drawings do not constitute a request for substitution. Products not specified or accepted in writing as equivalent to those specified shall not be installed. The CMAR shall be responsible for all costs associated with removal and replacement should the CMAR proceed with installation of any substituted product without specifically identifying the substitution and obtaining written approval of the substituted product.

2.5.2 Requests for substitutions must be submitted to the Owner and the Architect within 30 days after the Notice to Proceed date (or within the time period established in the Specifications, if that time period is shorter). Thereafter, substitutions will be considered only in cases of documented product unavailability or other conditions beyond the control and without the fault of the CMAR, or in special circumstances when allowed by the Owner and the Architect.

2.5.3 Final approval of all products shall be contingent on acceptance of the associated submittals and/or shop drawings, compliance with the Contract Documents, and acceptable installation. Approval to utilize a product does not relieve the CMAR of his responsibility to meet the requirements of the Contract Documents.

## 2.6 AS-BUILT DRAWINGS

2.6.1 The CMAR shall provide and maintain at the Project site one copy of all Contract Documents, in good order and marked to show clearly all changes and "as-built" conditions. The CMAR and his Subcontractors shall indicate daily on these documents all "as-built" conditions and revisions due to substitutions, field changes and Change Orders. The location of all concealed piping, conduit, fixtures, pull-boxes, and other similar installations, shall be clearly identified on these documents. Upon completion or termination of the Project, this set of documents shall be delivered to the Architect for utilization in preparation of the record drawings.

2.6.2 Progress payments may be reduced or withheld by the Owner in the event that as-built drawings are not kept current.

## 2.7 CHANGES IN THE WORK

2.7.1 A Change Order is an amendment to the Owner-CMAR Construction Agreement and is a written order to the CMAR signed by the Owner and the CMAR, which is issued after the execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time.

2.7.2 The Owner and the Architect shall have authority to order minor changes in the Work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be binding on the CMAR.

2.7.3 Should any event or circumstance occur that the CMAR believes may constitute a change in the Work entitling the CMAR to an adjustment to the Contract Sum or the Contract Time, the CMAR shall issue written notice and a request for a Change Order to the Owner within 7 days of the occurrence of such event or circumstance. Such written notice shall be issued by the CMAR for any event or circumstance that the CMAR knows, or should have known, to have a potential impact on the Work. The request shall describe in detail the related causes and any potential impact to the Work. The CMAR shall also identify any anticipated adjustment to the Contract Sum and/or to the Contract Time as a result of such impact. Failure to submit such written notice and a request within the time stipulated and with the information required by this section (Section 2.7) shall constitute a waiver by the CMAR of the right to a Change Order.

2.7.4 The CMAR shall not proceed with changes to the Work without a Change Order or a Construction Change Directive. If the CMAR proceeds with changes to the Work without proper written approval, he does so at his own risk.

2.7.5 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- A. By unit prices stated in the Contract Documents or subsequently agreed upon.
- B. By a lump sum proposal, which is mutually accepted, properly itemized, and which may include the following:
  - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
  - 2. Materials entering permanently into the Work, including sales tax.
  - 3. Equipment costs for equipment utilized to perform the Change Order work.
- C. By a not-to-exceed maximum cost, based on the actual cost of time and materials, properly itemized and verified, which may include the following:
  - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
  - 2. Materials entering permanently into the Work, including sales tax.
  - 3. Equipment costs for equipment utilized to perform the Change Order work.

2.7.6 The costs for changes in the Work may be increased to include a fixed mark-up for Subcontractor profit and overhead, CMAR profit and overhead on Subcontractor work, and profit and overhead on work done by the CMAR's own forces. This fixed mark-up shall not exceed the amounts stipulated below for a single Change Order item, or for any group of related items, and shall be full compensation for the cost of supervision (to include the Project Manager, Project Coordinator, Superintendent, and all other field and office personnel), field office and home office overhead, profit, tools, insurance and bonding, and all other costs or expenses associated with completing the change in the Work. No other costs or expenses, including, but not limited to, direct daily job costs, general conditions, and/or extended overhead will be paid for time extensions incorporated into a Change Order unless otherwise agreed to in writing by the Owner.

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

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

2.7.7 Execution of a Change Order shall be considered complete and final adjustment of the Contract Sum and the Contract Time and represents complete and final resolution of all matters related to, or arising out of, the Change Order. The CMAR may not reserve the right to make further claims with regard to any executed Change Order. Any attempt by the CMAR to reserve such a right shall be considered invalid and unenforceable.

2.7.8 All requests for changes in the Work shall be submitted to the Owner and the Architect in sufficient detail to allow a complete analysis of all proposed costs. The CMAR shall, upon request by the Owner or the Architect, submit invoices for materials and equipment utilized in Change Order work. Labor rates, including fringe benefits, shall be in conformance with the applicable prevailing wage rates for this Project.

2.7.9 The CMAR shall, upon request by the Owner or the Architect, submit detailed rationale and justification for labor rates utilized in Change Order work.

2.7.10 The CMAR will not be entitled to a Change Order for any work that reasonably could have or should

have been identified as necessary during the CMAR's participation in the design review process as defined in the Owner-CMAR Pre-Construction Agreement.

## 2.8 CONSTRUCTION CHANGE DIRECTIVES

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

## 2.9 CMAR'S USE OF CONTRACT DOCUMENTS

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

## SECTION 3: THE CONTRACT

### 3.1 GENERAL

- 3.1.1 The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral.
- 3.1.2 The Contract shall not be binding on either the Owner or the CMAR until the Owner-CMAR Construction Agreement and the Performance and Payment Bonds have been properly executed and submitted, and the Owner-CMAR Construction Agreement has been approved and signed by the President of the Board of Education for Douglas County School District, or his designated representative.
- 3.1.3 Execution of the Owner-CMAR Construction Agreement shall constitute the CMAR's representation, under penalty of perjury, that the CMAR has carefully examined the contents of all Contract Documents, that he has read and understands the same, and specifically agrees to be bound thereby. Additionally, execution of the Owner-CMAR Construction Agreement by the CMAR shall represent that he has inspected the site, familiarized himself with all local conditions, laws, and regulations under which the Work is to be performed and has correlated this knowledge with the requirements of the Contract Documents.
- 3.1.4 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and the CMAR, between the Owner and a Subcontractor, or between any persons or entities other than the Owner and the CMAR. The Architect shall, however, have authority to act on behalf of the Owner, to the extent provided in the Contract Documents.
- 3.1.5 The laws of the State of Nevada and the applicable rules and regulations of its departments, agencies,

and institutions shall govern the Project and the Work. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein, and the Contract shall be read and enforced as though such provision were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be physically amended to make such insertion or correction.

3.1.6 The Contract Sum is the sum stated in the Owner-CMAR Construction Agreement and is the total dollar amount payable by the Owner to the CMAR for the complete and approved performance of the Work in strict accordance with the Contract Documents.

### 3.2 CONTRACT TIME

3.2.1 The Contract Time is the period of time, in calendar days, allotted in the Contract Documents for the completion of the Work. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.

3.2.2 The date of commencement of the Work is the date established in the Notice to Proceed letter issued by the Owner.

3.2.3 The CMAR shall begin the Work on the starting date established in the Notice to Proceed letter. He shall perform the Work expeditiously with adequate forces and shall complete the Work within the Contract Time.

3.2.4 Unless otherwise agreed upon, normal working days are considered to be Monday through Friday, excluding holidays, between the hours of 7:00 a.m. and 4:00 p.m. The CMAR must understand that Douglas County is governed by a Noise Pollution Ordinance, and work is limited to the hours of 7:00 a.m. to 9:00 p.m. If the CMAR desires to work on any weekend day, holiday, or during any other hours of the day he shall request and obtain the Owner's written approval at least 5 days in advance of the requested deviation.

3.2.5 It is expressly understood and agreed that the Contract Time is a reasonable and acceptable time for completion of the Work considering the requirements of the Contract Documents, the type and scope of the Project, and the usual industrial and labor conditions prevailing in the locality of the Project.

3.2.6 It is expressly understood and agreed that the Contract Time includes adequate time to allow for usual weather delays considering the climatic conditions in the area of the Project. No adjustments to the Contract Time will be allowed on the account of usual weather. The CMAR shall include adequate float or other allowance in his construction schedule to accommodate weather conditions that may be associated with weather dependent work. An extension to the Contract Time will be considered only in a case where an abnormal or unusual weather delay has occurred.

3.2.7 The Contract Sum is based on the Contract Time specified in the Owner-CMAR Construction Agreement and shall not be based on an early completion schedule. No additional compensation shall be granted to the CMAR for delays to an early completion schedule and any such claim is hereby waived.

### 3.3 CONTRACT TIME EXTENSIONS

3.3.1 An extension in the Contract Time for a delay will be allowed only in the case that a full normal working day is lost. Delays will not be allowed for lost partial days or for lost non-working days.

3.3.2 All requests by the CMAR for extensions of the Contract Time due to delays to the Work shall be made

in writing to the Owner and the Architect within 10 calendar days after the start of the delay. Each request shall describe in detail the event or events causing the delay, any related causes, and any impact to the Work. Failure to submit such requests within the stipulated time and with the information required by this paragraph shall constitute a waiver by the CMAR of his right to an extension of the Contract Time on the basis of this event or issue.

- 3.3.3 If the CMAR is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, by any separate contractor employed by the Owner, or by circumstances that are agreed to be beyond the control and without the fault of the CMAR and his Subcontractors and suppliers, the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.
- 3.3.4 The CMAR shall not claim or be entitled to any compensation or damages from the Owner because of delay caused by the Owner, the Architect, or any person working for either of them, and any claim therefore is hereby waived. The CMAR's sole remedy shall be an extension of time to complete the Work as provided in the Contract Documents, except that the Owner agrees to compensate the CMAR for any damages resulting from any affirmative, willful act in bad faith performed by the Owner or his employees which unreasonably interferes with the CMAR's ability to complete the Work within the Contract Time.
- 3.3.5 For cumulative delays that total 5 days the CMAR may request an additional 2 days to account for the associated non-working weekend days. Should the CMAR request and be allowed a time extension which causes the Contract Time to end on a non-working day (on a weekend day or a holiday) the non-working day(s) may be added to the Contract Time such that the Contract Time ends on a working day.
- 3.3.6 Extensions to the Contract Time will not be allowed for delays that do not affect the critical path for completion of the Work.
- 3.3.7 Extensions to the Contract Time will not be allowed for delays which could have been avoided by the exercise of care, prudence, foresight, and/or diligence by the CMAR, or for delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

#### 3.4 SUBSTANTIAL COMPLETION

- 3.4.1 Substantial Completion is the stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that the Owner can occupy and/or utilize the Work (or portion thereof) for its intended use. The Work will not be considered substantially complete if any of the following conditions exist:
  - A. Any of the Work is incomplete or defective (including work identified in the final punch list) which, in the opinion of the Owner, would prevent or interfere with occupancy and/or full use of the facility.
  - B. The Project's mechanical systems have not been tested, balanced, and accepted as being fully complete (including commissioning when applicable).
  - C. The Project's electrical and life safety systems have not been tested and accepted as being fully complete (including commissioning when applicable).
  - D. Final clean-up is not complete.

- 3.4.2 The following procedure shall be used in establishing Substantial Completion of the Work, unless otherwise agreed to in writing:
- A. When the CMAR determines that the Work, or a portion thereof, which the Owner agrees to accept separately, is substantially complete, the CMAR shall submit written notice thereof to the Owner and the Architect, and shall include a punch list of all items which remain to be completed or corrected. Failure to include any items on the list does not alter the CMAR's responsibility to complete all of the Work in accordance with the Contract Documents.
  - B. Inspections for Substantial Completion may be requested by the CMAR only after the status of completion has been reviewed and assessed by the Owner's/Architect's Inspector. Upon such review the Inspector will issue a list of any observed code deficiencies or life-safety deficiencies that affect the issuance of a Certificate of Substantial Completion.
  - C. If the Owner and the Architect, on the basis of an on-site inspection, agree that the Work is substantially complete, the Architect may provide the CMAR with a list of additional corrective items which shall be added to the CMAR's and the Authority Having Jurisdiction Inspector's punch lists.
  - D. If the Owner and the Architect, on the basis of an on-site inspection, determine that the Work is not substantially complete, the Architect will notify the CMAR in writing, and will provide a list of observed deficiencies. The CMAR shall remedy the deficiencies and submit another written request for Substantial Completion.
  - E. When the Owner and the Architect determine that the Work is substantially complete, the Owner will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the CMAR for maintenance, heat, utilities, and insurance, and fix the time within which the CMAR shall complete the punch list items that are attached to the Certificate of Substantial Completion.
  - F. The Certificate of Substantial Completion shall be signed by the Owner and the CMAR as their written acceptance of the responsibilities assigned to them in such Certificate.
- 3.4.3 No payment, nor any use or occupancy of the Project, or any portion thereof, by the Owner, shall constitute an acceptance of any of the Work that is not in accordance with the Contract Documents, nor shall it relieve the CMAR of full responsibility for correcting defective work or materials found at any time prior to completion of the entire Project or during the guarantee period.
- 3.5 FINAL COMPLETION
- 3.5.1 When the CMAR considers the Work fully completed, he shall submit written notice to the Owner and the Architect confirming all of the following:
- A. The Work has been fully completed in accordance with the Contract Documents and is ready for final inspection.
  - B. All punch list items have been corrected or completed.
  - C. All equipment and systems have been tested, adjusted, and balanced and are fully operational.
  - D. All operation and maintenance manuals and training required by the Contract Documents have

been provided.

- E. All as-built drawings and operation and maintenance manuals have been submitted to the Architect in accordance with the Contract Documents.
- F. All guarantees, warranties, and surety releases required by the Contract Documents have been submitted to the Owner.
- G. Final Unconditional Lien Releases have been received from all second-tier suppliers or subcontractors on the project, providing proof of payment.

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

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

### 3.6 GUARANTEES AND WARRANTIES

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

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

3.6.3 Within the one year guarantee period, and for such longer periods as specified in the Contract Documents, the CMAR and/or his Surety shall promptly remedy any defects in the Work, and pay for any damage to other work resulting therefrom. The Owner shall notify the CMAR in writing of observed defects with reasonable promptness. The CMAR shall ensure that the corrective work is commenced within 7 days of such notice and completed in an expeditious and timely manner.

3.6.4 The obligations of the CMAR herein shall be in addition to and not in limitation of any obligation imposed upon him by law.

3.6.5 The CMAR and requested Subcontractors shall attend a warranty inspection that will be scheduled by the Owner for a date approximately 10 months after the date of the Certificate of Substantial Completion. The CMAR shall take immediate action to remedy, at no cost to the Owner, all warranty items identified during the inspection.

### 3.7 LIQUIDATED DAMAGES

- 3.7.1 It is hereby mutually understood and agreed, by and between the CMAR and the Owner, that the Contract Time, as specified in the Contract, is an essential condition of the Contract. It is further mutually understood and agreed that both the Work and the Contract Time shall commence on the starting date established in the Notice to Proceed letter.
- 3.7.2 The CMAR agrees that all of the Work shall be prosecuted regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time.
- 3.7.3 If the CMAR shall neglect, fail, or refuse to achieve Substantial Completion of the Work within the Contract Time, then the CMAR and his Surety do hereby agree, as part of the consideration for the Contract, to pay to the Owner, not as a penalty, but as liquidated damages, the amount of money specified in the Owner-CMAR Construction Agreement for each and every excess calendar day that is required to achieve Substantial Completion of the Work. The specified liquidated damages shall be the Owner's sole and exclusive remedy for excess calendar days.
- 3.7.4 The CMAR and the Owner mutually agree that in the event of a delay the actual damages to be suffered by the Owner are difficult to determine and accurately quantify. Accordingly, the CMAR, his Surety, and the Owner agree that the amount specified in the Owner-CMAR Construction Agreement for liquidated damages is the appropriate and best estimate of the damages that would actually be incurred by the Owner should the Work not be completed within the Contract Time.
- 3.7.5 Should the remaining balance of the Contract Sum be insufficient to cover the specified liquidated damages due the Owner, then the Owner shall have the right to recover such damages from the CMAR and/or his Surety.
- 3.7.6 Liquidated damages shall cease to be assessed on the date that Substantial Completion is achieved provided the CMAR completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If the CMAR does not complete all of the punch list work within the time limit stipulated in the Certificate of Substantial Completion, the assessment of liquidated damages shall resume on the date that the stipulated time limit expires and shall continue until all such punch list work is completed.

### 3.8 CLAIMS FOR DAMAGES

- 3.8.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other party within 7 days after the first knowledge of such injury or damage.
- 3.8.2 Any costs to the Owner caused by defective or ill-timed work performed by the CMAR shall be paid by the CMAR.

### 3.9 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

- 3.9.1 Any and all disputes of any kind that may arise between the Owner and the CMAR under the Contract or the Contract Documents that cannot initially be resolved to the satisfaction of both parties shall be submitted first to mediation to be conducted in a location that is agreeable to both parties utilizing the services of a mediator who is acceptable to both parties. All fees of the mediator and related costs associated with mediation shall be split and paid equally by the parties.

3.9.2 In the event either that the parties agree to forego mediation of their dispute(s), or that mediation is unsuccessful, then all disputes between them of any kind or nature arising out of or under the terms of the Contract, or the Contract Documents, or the performance of the Contract, and which arose prior to the termination of the guarantee period specified in the Contract, shall be determined exclusively by and through mandatory, binding arbitration conducted in Douglas County, Nevada (unless the parties agree upon a different location) pursuant to the Nevada Uniform Arbitration Act of 2000, NRS 38.276 et seq., (the "Act"). The parties shall, by agreement between them if possible, select one (1) person as arbitrator who has substantial experience in the area(s) of the disputed issues(s). If they cannot agree upon an arbitrator, either party may apply pursuant to NRS 38.226 to the Ninth Judicial District Court of the State of Nevada in Minden, Douglas County, Nevada to appoint an arbitrator. The arbitrator selected by either method shall have all of the powers set forth in the Act, and shall enter an award at the conclusion of the proceedings, including an award of reasonable attorney's fees and costs to the prevailing party. In no event, however, may the award include any tort or punitive damages. The arbitrator's fee and the cost of the arbitration proceeding itself may be divided equally between the parties or the arbitrator may award all or any part of the fee and costs of the proceeding to either party in his/her reasonable discretion.3.10

### 3.10 TERMINATION BY THE CMAR

3.10.1 The CMAR may, upon 7 days written notice, terminate the Contract after the Work is stopped for a period of 60 consecutive days through no act or fault of the CMAR, of a Subcontractor, or their employees or agents, or due to issuance of a court order or other order from a public authority having jurisdiction.

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

### 3.11 TERMINATION BY THE OWNER

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

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

A. Should the Owner terminate the Contract for any of the aforementioned reasons, the CMAR shall not be entitled to receive any further payment until the entire Work is fully complete and the actual amount due the CMAR can be properly determined.

B. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR or his Surety shall promptly pay the difference to the Owner.

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

### 3.12 SEPARATE CONTRACTS

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

3.12.2 The CMAR shall afford the Owner's separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly interface and coordinate his work with theirs.

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

3.12.4 The CMAR shall do all cutting, fitting, and patching of the Work that may be required to fit it to receive or be received by the work of other contractors as indicated in, or reasonably implied by, the Contract Documents. The CMAR shall not endanger or alter the work of any other contractor.

3.12.5 Should the CMAR cause damage to the work or property of any separate contractor on the Project, the CMAR shall, upon written notice, settle with the other contractor. If the separate contractor sues the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR who, at his sole expense, shall defend the proceedings and pay all costs in connection therewith, including, but not limited to, all court costs and attorney fees, and any judgments against the Owner arising therefrom.

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

### 3.13 ASSIGNMENT

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

### 3.14 SEVERABILITY

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

### 3.15 INDEMNIFICATION

- 3.15.1 To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- 3.15.2 The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.
- 3.15.3 The CMAR waives all rights of subrogation against the Owner, the Owner's officers, agents, and employees, and the Architect, the Architect's officers, agents, and employees, for losses arising from the Work.
- 3.15.4 In any and all claims against the Owner or the Architect or any of their officers, agents, or employees by any employee of the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CMAR or any Subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts.
- 3.15.5 Obligations of the CMAR hereunder shall not extend to the liability of the Architect, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or the giving of or the failure to give directions or instructions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.
- 3.15.6 Obligations of the CMAR hereunder shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist pertaining to a party or person described herein. This indemnification obligation shall not be diminished or limited in any way by the limits of insurance required in this Contract or otherwise available to the CMAR or Subcontractors.
- 3.15.7 All indemnification obligations of the CMAR shall survive final payment.

### 3.16 OWNER OVERSIGHT OF CMAR BIDDING PROCEDURES

- 3.16.1 The CMAR agrees to coordinate with, document, and disclose to the Owner all bidding and contracting procedures utilized in negotiating with and contracting with the subcontractors and suppliers.
- 3.16.2 The CMAR shall obtain a minimum of 3 bids on all items of work unless a lesser number of bids is deemed acceptable and is approved by the Owner.
- 3.16.3 The CMAR shall demonstrate to the satisfaction of the Owner that he has adequate previous experience on any work that he intends to self-perform and shall also provide evidence that his

proposed cost for such work is lower than the other bids received for that work.

- 3.16.4 If the CMAR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after a 7 day written notice to the CMAR, and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CMAR the cost of correcting such deficiencies, including the cost of the additional professional services made necessary by such default, neglect, or failure. If the payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall immediately pay the difference to the Owner.

## **SECTION 4: THE OWNER**

### **4.1 OWNER'S RESPONSIBILITIES**

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

### **4.2 OWNER'S AUTHORITY**

- 4.2.1 The Owner and his representatives shall at all times have access to the Work whenever it is in preparation or progress, and the CMAR shall provide proper equipment and facilities for such access and inspection. If any work is required to be tested or approved, the CMAR shall give the Owner timely notice of its readiness for inspection. Neither the observations of the Owner or the Architect in the general administration of the Contract, nor any inspections, tests, or approvals shall relieve the CMAR from his obligation to perform the Work in accordance with the Contract Documents.

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

## **SECTION 5: THE CONSTRUCTION MANAGER AT RISK (CMAR)**

### **5.1 GENERAL**

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

### **5.2 CMAR'S RESPONSIBILITIES**

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

- 5.2.4 The CMAR and each Subcontractor shall have and maintain a State of Nevada Contractor's license in good standing for the entire duration of the Work.
- 5.2.5 The CMAR shall at all times enforce good discipline and order among his employees and Subcontractors and shall, at his own cost, provide the security necessary to adequately protect the Work.
- 5.2.6 The CMAR shall at all times, and at his own cost, safely guard and protect the Owner's property, the Work, and all property adjacent to the Project, from damage, injury, or loss in connection with the Project and shall replace or make good any such damage, injury, or loss. The CMAR shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities.
- 5.2.7 The CMAR shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work.
- 5.2.8 In the event of a temporary suspension of the Work, and/or during inclement weather, the CMAR shall protect, and shall cause his Subcontractors to protect the Work and materials against damage, injury, or loss. If any work or materials become damaged, injured, or lost due to any cause, such work and materials shall be removed and replaced at the expense of the CMAR.

### 5.3 SUPERINTENDENT

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

### 5.4 LABOR AND MATERIALS

- 5.4.1 Unless otherwise specifically stated in the Contract Documents, the CMAR shall provide and pay for all labor, materials, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction services, procedures, and facilities of every nature required to properly execute and complete the Work in accordance with the Contract Documents. All materials shall be installed in strict compliance with the Contract Documents and the recommendations of the manufacturer.
- 5.4.2 The CMAR shall not employ or contract with any firm or organization that is unfit or unskilled in the work to be performed. The CMAR shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, race, color, creed, or national origin. The CMAR shall comply with and shall require his Subcontractors to comply with all applicable provisions of Nevada Revised Statutes Title 28 (Public Works and Planning) and Nevada Revised Statutes Title 53 (Labor and Industrial Relations).
- 5.4.3 When required by the Contract Documents, the CMAR shall ensure that all employees on the Project are paid in accordance with the Prevailing Wage Rates as published in the Contract Documents and as issued by the State Labor Commission for the area or place of the Work. The CMAR shall forfeit, by deductive Change Order, the amounts stipulated in Nevada Revised Statutes Section 338.060, should the CMAR fail to comply with any of the applicable prevailing wage rate requirements.
- 5.4.4 All work performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to the Owner.

- 5.4.5 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the CMAR shall furnish evidence, satisfactory to the Owner, as to the type and quality of all materials and equipment.
- 5.4.6 No materials or equipment for the Work shall be purchased by the CMAR, nor shall the CMAR permit any Subcontractor to purchase materials or equipment, that are subject to any chattel mortgage, or are under a conditional sale contract or other security agreement by which any right, title, or interest is retained by the seller.
- 5.4.7 All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the CMAR. Such certificates shall be executed by qualified firms acceptable to the Owner, shall include all information required by the Contract Documents, and shall clearly refer specifically to the relevant materials and/or equipment.

## 5.5 TEMPORARY UTILITIES

- 5.5.1 The CMAR shall be solely responsible for providing all necessary temporary utilities. The CMAR shall pay all costs related thereto, including, but not limited to, applications, fees, permits, engineering, and any other costs as may be required to acquire temporary utilities. The Owner will not be responsible for any delays or costs related to obtaining temporary utilities.
- 5.5.2 Temporary utilities may be connected to the Owner's existing metered utilities only with the Owner's and utility company's written authorization. Any connection to the Owner's existing utilities shall be separately metered to allow for proper allocation of utility costs, unless another arrangement is specifically agreed to and authorized by the Owner in writing. Temporary meters shall be removed upon completion of the Work.
- 5.5.3 The CMAR shall be solely responsible for providing temporary heating, cooling, and/or ventilation as required to prevent degradation or damage to the Work. The permanent heating, cooling, and air handling systems shall not be utilized for the purpose of temporary heating, cooling, or ventilation until the Owner approves of such use in writing. In no case shall the permanent heating, cooling, or air handling systems be operated until they are complete, including formal start-up, check-out, and testing and balancing. Utilization of any of the permanent heating, cooling, or air handling systems prior to Substantial Completion shall not impact the specified warranty for such equipment which shall begin on the date of Substantial Completion in accordance with Section 3.4 of these General Conditions.

## 5.6 EMERGENCIES

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

include telephone numbers for the CMAR's superintendent and for other responsible CMAR representatives that can be contacted after normal working hours in the event of an emergency. This list shall be prominently posted both inside and outside of the CMAR's field office.

## 5.7 CONSTRUCTION SCHEDULE

- 5.7.1 Within 30 days after issuance of the Notice to Proceed and prior to issuing any progress payment application, the CMAR shall submit a construction schedule to the Owner and the Architect for review. The schedule shall not exceed the Contract Time, shall be revised at appropriate intervals as required by the progress and conditions of the Work, and shall provide for performance and completion of the Project in accordance with the Contract Documents.
- 5.7.2 The construction schedule shall be organized to show progress for each trade and operation. As a minimum, the schedule shall show the order in which the CMAR proposes to perform the Work, with the proposed starting and completion dates, and with available float for each activity of the Work. Activities which constitute critical path portions of the Work shall be clearly identified as such. The schedule shall be promptly updated as necessary to reflect the work required to implement each change order and/or change in the Work. The schedule shall also include reasonable and orderly dates for issuance of all required submittals, allowing for reasonable notice and staged delivery of submittals to the Architect.
- 5.7.3 For projects with a Contract Sum of \$10,000,000 or greater, the CMAR shall utilize a form of project planner software acceptable to the Owner to create and manage the construction schedule. Submitted schedules and associated data shall be provided in both hard copy and electronic file format. Upon written request by the Owner, the CMAR shall provide prompt responses to any questions regarding reasons or causes for changes to the construction schedule.
- 5.7.4 The CMAR shall submit a current/updated construction schedule with each Progress Payment Application. Failure by the CMAR to provide a current construction schedule shall be justification for the Owner to withhold approval or reduce the amount of the payment due the CMAR.
- 5.7.5 In the event of any failure to adhere to the construction schedule the CMAR shall, within 14 days of written notice from the Owner, provide a recovery schedule for review by the Owner and the Architect. The recovery schedule shall identify how the CMAR proposes, at his sole expense, to overcome the associated delays and complete the Work within the Contract Time. Such notice from the Owner shall not constitute either actual or implied direction for the CMAR to accelerate the Work.

## 5.8 CONSTRUCTION PROGRESS MEETINGS

- 5.8.1 The CMAR shall attend a weekly coordination meeting at the Project site, to be attended by the CMAR's Project Manager and Superintendent, the Architect, the Owner's designated representatives, and appropriate Subcontractors. Such meetings may be scheduled at less frequent intervals, if agreed upon in writing by the Owner and the CMAR.
- 5.8.2 The Architect will conduct the job-site construction progress meetings and will prepare and distribute typed meeting minutes for each such meeting.

## 5.9 PROGRESS PHOTOGRAPHS

- 5.9.1 The CMAR shall take not less than twelve progress photographs of the Work each month at a minimum resolution of 640 by 480 pixels. The photographs shall be taken with the intent of providing a clear and

complete depiction of overall Project progress. Each photograph is to be clearly marked with the time, date, location/view and other details sufficient to identify the subject. Camera view/locations shall be coordinated with and approved by the Owner or the Architect. Progress photos shall be stored on a digital video disk (DVD disk) and issued to the Owner along with each progress payment application.

#### 5.10 TAXES, PERMITS, FEES AND NOTICES

- 5.10.1 The CMAR shall pay all sales, consumer, use, and other taxes required by law. (Douglas County School District is a Public, tax-exempt entity and will refuse payment of any tax-related items invoiced.)
- 5.10.2 The CMAR shall secure and pay for all construction-related permits, fees, and licenses necessary for the proper execution and completion of the Work, including, but not limited to, dust control permits, storm water mitigation permits, and utility tap fees and permits. The CMAR shall not be required to pay for a municipal or county building permit, or permanent utility usage fees.
- 5.10.3 The CMAR shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work and of the Using Agency. If the CMAR discovers that any of the Contract Documents are at variance therewith, he shall immediately notify the Owner and the Architect in writing. If the CMAR performs any work which he knows or should have known to be contrary to such laws, ordinances, rules, and regulations, or orders, without such written notice and written instruction from the Owner or Architect, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

#### 5.11 PROJECT SIGN

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

#### 5.12 ACCESS ROADS

- 5.12.1 The CMAR shall use designated access roads as directed by the Owner, and the CMAR shall keep these roads passable at all times. The CMAR shall be entirely responsible for any damage to roads, trees, shrubs, gates, fences, grass, curbs, gutters, and driveways due to construction usage. All damaged portions shall be restored by the CMAR, at his own cost, to the same condition as existed before the commencement of the Work.
- 5.12.2 Dirt roads shall be periodically sprinkled with water when dust conditions create an on site or off site hazard or nuisance to workmen, neighboring properties, or the public in general. The CMAR shall secure and pay for any dust control permits required by State or local jurisdictions.

#### 5.13 CMAR'S FIELD OFFICE

- 5.13.1 Upon commencement of the Work, the CMAR shall provide on the site a temporary field office for his own use (and for use by the Owner and others as required or appropriate). The CMAR's field office shall contain as a minimum:
  - A. A minimum of 120 square feet of floor area and as appropriate to facilitate the required job site meetings.
  - B. Outside door with security lock.
  - C. Minimum of four electrical convenience outlets.
  - D. Adequate light fixtures and lamps (as necessary to provide a minimum of 100 foot-candles at the

desktop and plan table).

- E. Telephone line and a separate fax line.
- F. Heating, ventilation, and air conditioning provisions as necessary to maintain an indoor temperature of 72°F.
- G. Plan rack.
- H. Plan table (3 feet x 6 feet minimum size).
- I. Four-drawer file cabinet.
- J. First aid kit.
- K. Computer data/network connection (with Internet access).
- L. Conference table and chairs as necessary to accommodate the required construction progress meetings.
- M. Copy machine.
- N. Bottled water dispenser.
- O. Additional hard hats for use by the Owner and Architect.

5.13.2 The CMAR shall pay the cost of all utilities, including telephone and janitorial service, as required for the maintenance of the temporary field office until the completion of the Project.

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

#### 5.14 OWNER'S FIELD OFFICE

5.14.1 Upon commencement of the Work, the CMAR shall provide on the site a temporary field office for the sole use of the Owner. The Owner's field office shall contain as a minimum:

- A. A minimum of 120 square feet of floor area.
- B. Outside door with security lock.
- C. Minimum of four electrical convenience outlets.
- D. Adequate light fixtures and lamps (as necessary to provide a minimum of 100 foot-candles at the desktop and plan table).
- E. Telephone line.
- F. Heating, ventilation, and air conditioning provisions as necessary to maintain an indoor temperature of 72°F.
- G. Plan rack.
- H. Plan table (3 feet x 6 feet minimum size).
- I. Four-drawer file cabinet.
- J. First aid kit.
- K. Computer data/network connection (with Internet access).
- L. Flat top double pedestal desk with drawers and cushioned chair.

5.14.2 The CMAR shall pay the cost of all utilities, including telephone and janitorial service, as required for the maintenance of the Owner's field office until the completion of the Project.

5.14.3 The Owner's field office shall remain the property of the CMAR, and shall be completely removed at the completion of the Project.

#### 5.15 TOILET FACILITIES

5.15.1 The CMAR shall provide and maintain in a clean and sanitary condition in a weatherproof building

satisfactory toilet accommodations for all workmen and for use by the Owner's representatives. Minimum toilet accommodations shall consist of a frost-proof chemical toilet or water closet with urinal. Temporary or portable toilet accommodations shall be completely removed upon completion of the Project.

#### 5.16 PATENTS AND ROYALTIES

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

#### 5.17 CONSTRUCTION SURVEYS

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

#### 5.18 SUBSURFACE CONDITIONS

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

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

#### 5.19 ARCHAEOLOGICAL FINDINGS

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

#### 5.20 MATERIALS TESTING

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

5.20.2 If special inspection or testing requirements are established by any of the Contract Documents, performance of and payment for such inspection or testing shall be as specifically stated therein. If the

manner of payment is not specified or if there is no mention of such inspection or testing in the Contract Documents, but such inspection is judged necessary by the Owner, then the Owner shall pay the cost thereof. The CMAR shall cooperate toward minimizing the cost of such inspection and testing.

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

## 5.21 OPERATION AND MAINTENANCE MANUALS

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

## 5.22 CORRECTION OF WORK

- 5.22.1 If any work should be covered prior to either a specified or a requested inspection, the CMAR shall uncover the work for observation and if found to be defective or nonconforming shall replace the work at no cost to the Owner.
- 5.22.2 If any work has been covered which the Owner or the Architect has not specifically requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the CMAR. If the uncovered work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If the uncovered work is not in accordance with the Contract Documents, the CMAR shall pay such costs.
- 5.22.3 The CMAR shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after the Certificate of Substantial Completion is issued, and whether or not fabricated, installed, or completed. The CMAR shall bear all costs of correcting such rejected work, including, but not limited to, the cost for additional professional services.
- 5.22.4 The CMAR shall bear all costs associated with making good all work of separate contractors destroyed or damaged by removal or correction.
- 5.22.5 If the CMAR does not remove defective or non-conforming work immediately upon written notice, the Owner may remove it and may store the materials or equipment at the expense of the CMAR. If the CMAR does not pay the cost of such removal and storage immediately upon written notice, the Owner may sell such work at auction or at private sale to recover the related costs. If such proceeds do not cover all related costs incurred by the Owner the difference shall be charged to the CMAR and an appropriate Change Order shall be issued.
- 5.22.6 If the CMAR fails to correct defective or non-conforming work, the Owner may correct it at the CMAR's expense.
- 5.22.7 If the Owner prefers to accept non-conforming work, he may do so instead of requiring its removal or correction, in which case an appropriate reduction will be made to the Contract Sum, or, if the amount is determined after final payment, such amount shall be paid to the Owner by the CMAR immediately upon written notice.

5.22.8 All damage or loss to any property caused in whole or in part by the CMAR, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the CMAR, except damage or loss attributable to errors and/or omissions in the Contract Documents.

### 5.23 SUBCONTRACTORS

5.23.1 After submitting the required Subcontractor information to the Owner, the CMAR shall not contract with any other Subcontractor nor change Subcontractors without proper justification and without the prior written approval of the Owner.

5.23.2 If the Owner has a reasonable objection to any Subcontractor, and requests in writing a change in Subcontractors, the CMAR shall submit an acceptable substitute, and the Contract Sum may be increased or decreased by any reasonable costs directly caused by such substitution.

5.23.3 The CMAR will not be required to contract with any Subcontractor, person, or organization against whom he has a reasonable objection.

5.23.4 The CMAR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CMAR by the terms of the General Conditions and the other Contract Documents. These provisions shall include, but shall not be limited to, the following:

- A. Require that the Subcontractor's work be performed in accordance with the requirements of the Contract Documents and be guaranteed for a period of one year after the date of Substantial Completion, or as may be required in the Contract Documents.
- B. Require that the Subcontractor's work be performed in accordance with the CMAR's construction schedule to ensure completion within the Contract Time.
- C. Require that all claims by the Subcontractor for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the CMAR in the time and manner provided in the Contract Documents for like claims by the CMAR upon the Owner.

5.23.5 The CMAR shall pay each Subcontractor, within 10 calendar days after receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the CMAR on account of each Subcontractor's work. The CMAR shall also require that each Subcontractor make similar payments to each Sub-subcontractor.

5.23.6 The CMAR shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of the persons directly employed by him. If, through acts or neglect on the part of the CMAR, any Subcontractor suffers loss or damage, the CMAR agrees to settle with such Subcontractor. If such Subcontractor asserts any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR, who shall indemnify, hold harmless, and defend the Owner against any such claim.

5.23.7 If the CMAR fails to make appropriate payments to any Subcontractor, workman, or supplier, then the Owner may pay unpaid bills and/or withhold from the CMAR's unpaid compensation a sum of money deemed reasonably sufficient to reimburse the Owner or pay any and all such claims until satisfactory evidence is furnished that all such liabilities have been fully discharged by the CMAR, but in no event

shall the provisions of this paragraph be construed to impose any obligations upon the Owner to the CMAR, his Surety, Subcontractors, workmen, or suppliers. In paying any unpaid bills of the CMAR, the Owner shall be deemed the agent of the CMAR, and any payment so made by the Owner, shall be considered as a payment made under the Contract by the Owner to the CMAR, and the Owner shall not be liable to the CMAR for any such payment made in good faith.

5.23.8 The CMAR shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under the Contract.

5.23.9 The Owner may upon request, furnish to any Subcontractor or supplier, information regarding payments to the CMAR on account of work done by such Subcontractor or supplier.

5.23.10 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor, workman, or supplier, except as may otherwise be required by law.

#### 5.24 JOB SAFETY

5.24.1 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

5.24.2 All work shall be performed in strict accordance with the most current edition of the State of Nevada Occupational Safety and Health Standards.

5.24.3 The CMAR shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

- A. All employees on the Project and all other persons who may be affected thereby;
- B. All of the Work, whether in storage on or off the site; and,
- C. All property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

5.24.4 The CMAR shall comply with all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss. The CMAR shall erect and maintain, as required by existing conditions and by the progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent properties.

5.24.5 The CMAR shall designate a responsible member of his organization at the site whose duty shall be supervision of a safety program and the prevention of accidents. This person shall be the CMAR's superintendent unless otherwise designated in writing by the CMAR to the Owner.

5.24.6 In any emergency affecting the safety of persons or property, the CMAR shall act, at his discretion, to prevent threatened damage, injury, or loss.

5.24.7 The CMAR shall be responsible for the safe operation of all equipment, for utilizing safe construction methods, and for any damage which may result from failure or from improper construction, maintenance, or operation.

- 5.24.8 The CMAR shall securely fence, barricade, cover, or otherwise adequately protect all excavations, holes, shafts, or other hazards to guard against danger to persons or animals and shall properly maintain such protection until the completion of the Project.
- 5.24.9 The CMAR shall immediately notify the Owner, and shall take immediate action to prevent damage, injury or loss, should any suspected hazardous materials be encountered during the course of work on the Project.
- 5.24.10 Prior to conducting any hot work (welding, brazing, soldering, cutting, grinding, etc.) in an existing building the Contractor shall complete and submit to the Owner a Hot Work Permit (utilizing the associated form as issued by Factory Mutual or Global Risk Consultants).

5.25 QUALITY ASSURANCE/QUALITY CONTROL

- 5.25.1 The CMAR shall develop and implement an appropriate quality assurance/quality control program for the Project. A detailed description of the program shall be furnished to the Owner and the Architect for review prior to submitting the first progress payment application.

5.26 SITE MANAGEMENT AND CLEANUP PROCEDURES

- 5.26.1 The CMAR shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The CMAR shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his operations.
- 5.26.2 The CMAR shall obtain any required dust control permit and shall implement a dust control program prior to beginning any activity at the project site. The CMAR's dust control program shall comply with all applicable state and local requirements. As a minimum, the CMAR shall periodically sprinkle the entire construction site with water as required to prevent blowing dust from becoming a hazard or nuisance to workmen, neighboring properties, or the public.
- 5.26.3 The CMAR shall develop and implement a stormwater pollution prevention plan complying with the most current version of the federal Environmental Protection Agency Construction General Permit, or with applicable state or local stormwater pollution prevention requirements, whichever is most stringent.
- 5.26.4 It shall be the CMAR's responsibility to provide applicable or required barrier methods or fencing to confine the area under construction, including cautionary tape, chain link fencing and gates, or any other material necessary to fully enclose the area of construction to protect student and staff safety. The area must be confined at all times.
- 5.26.5 Upon completion of the Work the CMAR shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The CMAR shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition. The aforementioned cleanup requirements are also specifically applicable to all mechanical equipment and to all mechanical equipment rooms.

## **SECTION 6: THE ARCHITECT**

### **6.1 ARCHITECT'S RESPONSIBILITIES**

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

## **SECTION 7: PAYMENT**

### **7.1 SCHEDULE OF VALUES**

- 7.1.1 Within 14 calendar days after the issuance of the Notice to Proceed, the CMAR shall submit to the Owner and the Architect a schedule of values of the various portions of the Work, aggregating to the total Contract Sum, divided to facilitate payments to Subcontractors, prepared in a form acceptable to the Owner, and supported by such data to substantiate its correctness as the Owner may require. This schedule, when approved by the Owner and the Architect, shall be the basis for each Progress Payment Application. The scheduled costs shall be itemized in accordance with the breakdown listed in the

CMAR GMP Proposal and according to the list of defined components included in Section 7.2 (Payment Terms and Conditions).

## 7.2 PAYMENT TERMS AND DEFINITIONS

### 7.2.1 Cost of the Work (and related terms).

- A. The Cost of the Work includes wages paid for labor in the direct employ of the CMAR in the performance of the Work. Labor rates, including fringe benefits, shall be in conformance with the applicable Prevailing Wage Rates as published by the Nevada State Labor Commission for this project.
- B. The Cost of the Work includes the cost of all materials, supplies, and equipment incorporated in the cost of the Work, including costs of certificates of inspection and testing, transportation, storage, and handling.
- C. The Cost of the Work includes all payments made by the CMAR to the Subcontractors and suppliers for the cost of the Work performed under the Contract.
- D. The Cost of the Work includes the cost of bonding as stipulated in Section 8 herein (Insurance and Bonding).
- E. The Cost of the Work includes all allowable permits, fees, licenses, and tests.
- F. The Cost of the Work includes rental charges for all necessary machinery and equipment, exclusive of hand tools owned by workers, used for the Work, whether rented from the CMAR or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs at rates consistent with those prevailing in the area.
- G. Sales, use, gross receipts or other taxes, tariffs or duties related to the cost of the Work for which the CMAR is liable.

### 7.2.2 CMAR's General Conditions (and related terms).

- A. The CMAR's General Conditions includes the superintendent, foreman, project management, scheduling, equipment and employee costs, and general conditions; and shall be itemized as a lump sum amount and billed based upon the percentage complete of the entire Work.
- B. The CMAR's General Conditions includes salaries of CMAR's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing jobsite functions while located at the principal office; including the CMAR's project manager, project engineer, project coordinator, and project estimator.
- C. The CMAR's General Conditions includes the cost of all employee benefits and taxes including, but not limited to, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the CMAR's standard personnel policy, insofar as such costs are actually paid to employees of the CMAR who are engaged in the Work.
- D. The CMAR's General Conditions include reasonable transportation, travel, and hotel expenses for the CMAR's personnel incurred in connection with the Work.
- E. The CMAR's General Conditions include the cost (including transportation and maintenance) of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by workers) that are used or consumed in the performance of the Work.
- F. The CMAR's General Conditions include the cost of insurance as stipulated in Section 8 herein (Insurance and Bonding).
- G. The CMAR's General Conditions include sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the CMAR is liable.
- H. The CMAR's General Conditions include all costs associated with establishing, equipping, operating, maintaining, and demobilizing the specified field office(s).

- I. The CMAR's General Conditions include all costs for reproduction, photographs, fax transmissions, long distance telephone calls, data processing services, postage, express delivery charges, on-site telephone service, and reasonable petty cash expenses at the CMAR's field office.
- J. The CMAR's General Conditions include all temporary water, power, and fuel costs necessary for the Work.
- K. The CMAR's General Conditions include all costs for removal of all generated non-hazardous substances, debris, and waste materials.
- L. The CMAR's General Conditions include costs incurred by the CMAR due to any emergency affecting the safety of persons and/or property.
- M. The CMAR's General Conditions include all costs directly incurred in the performance of the Work or in connection with the Project, and not included in the CMAR's Fee, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.
- N. The CMAR's General Conditions include all costs related to the CMAR's safety program.

#### 7.2.3 CMAR's Fee (and related terms).

- A. The CMAR's Fee includes salaries and other mandatory or customary compensation of the CMAR's employees at its principal and branch offices, except employees assigned to the Project at the principal office. Specifically excluded are the project manager, project engineer, project coordinator, and project estimator (listed under Cost of the Work).
- B. The CMAR's Fee includes general and administrative expenses of the CMAR's principal and branch offices other than the field office. Specifically excluded are materials and equipment utilized at the jobsite.
- C. The CMAR's Fee includes the CMAR's capital expenses, including interest on the CMAR's capital employed for the Work.
- D. The CMAR's Fee includes the CMAR's profit.

#### 7.2.4 CMAR's Contingency (and related terms).

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

#### 7.2.5 Owner's Contingency (and related terms).

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

### 7.3 PROGRESS PAYMENT APPLICATIONS

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

7.3.2 Each Progress Payment Application shall correctly set forth the value of all work satisfactorily performed to date, less 10% of that amount as a retained percentage. Once the Work is 50% complete, the Owner may, at his discretion, reduce the amount of retention to 5% of the total Contract Sum. The Owner may pay the invoiced value, less retention, of materials properly stored on site or in approved, bonded, and insured facilities. In no event will the CMAR be paid more than the listed value of each properly completed portion of the Work, less the required retention, until the entire Work has been successfully completed.

7.3.3 If payment is requested for materials or equipment not yet incorporated in the Work, but delivered and

properly stored at the site or at a bonded and insured facility previously approved by the Owner in writing, such payment shall be conditioned upon submission by the CMAR of documentation, satisfactory to the Owner, as deemed necessary to protect the Owner's interest, including applicable insurance and transportation to the job-site. The risk of loss for such materials or equipment shall remain with the CMAR until final completion and acceptance of the Work.

- 7.3.4 The CMAR guarantees that title to all work, materials, and equipment covered by a Progress Payment Application, whether incorporated into the Project or not, has passed to the Owner prior to issuing the Progress Payment Application, free and clear of all liens, claims, security interests, or encumbrances, and that no work, materials, or equipment covered by a Progress Payment Application has been acquired by the CMAR, or by any other person, subject to an agreement under which an interest therein, or an encumbrance thereon is retained by the seller or otherwise imposed by the CMAR or such other person. This provision shall not be construed to relieve the CMAR of his sole responsibility for the care and protection of the Work, and to restore all damages thereto, nor shall serve as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents.
- 7.3.5 Upon receipt of each Progress Payment Application, and within a reasonable time, the Owner and the Architect will either approve the Progress Payment Application, modify the Progress Payment Application for such amount as is determined to be properly due, or reject the Progress Payment Application.
- 7.3.6 The Owner or the Architect may decline to approve any Progress Payment Application, or, because of subsequently discovered evidence or subsequent inspections, may nullify the whole or any part of a Progress Payment Application previously paid to such extent as may be necessary to protect the Owner from loss based on any of the following grounds. When the grounds are removed, payment shall be approved for the associated amount withheld.
- A. Defective work not remedied.
  - B. Claims filed or reasonable evidence indicating the probable filing of claims.
  - C. Failure of the CMAR to make proper payments to Subcontractors or Suppliers.
  - D. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum.
  - E. Damage to a separate contractor.
  - F. Reasonable indication that the Work will not be completed within the Contract Time.
  - G. Unsatisfactory execution of the Work by the CMAR.
  - H. Failure to maintain any insurance required by the Contract Documents.
  - I. Any other breach of the Contract Documents.
- 7.3.7 If the Owner should fail to pay the CMAR within 45 calendar days after the date that a Progress Payment Application is signed and approved for payment by the Owner, then the CMAR may, after 7 additional calendar days, give written notice to the Owner and stop the Work until payment is received.
- 7.3.8 No payment by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents, nor shall it relieve the CMAR of full responsibility for correcting defective work or

materials found at any time prior to completion of the entire Work or during the guarantee period.

#### 7.4 FINAL PAYMENT

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

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

A. Unsettled claims.

B. Guarantee or Warranty issues.

C. Faulty or defective work.

E. Failure of the Work to comply with the requirements of the Contract Documents.

F. Latent defects in the Work.

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

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

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

#### 7.5 INTEREST PAYMENTS

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

### **SECTION 8: INSURANCE AND BONDING**

#### 8.1 GENERAL REQUIREMENTS

8.1.1 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at his sole expense, procure, maintain, and keep in force the amounts and types of insurance conforming to the minimum requirements set forth in this Section, unless otherwise agreed to by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. If the CMAR fails to comply with this Section, the CMAR shall be considered in default of the Contract.

- 8.1.2 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at the CMAR's sole expense, cause each Subcontractor and each Sub-subcontractor involved with the work of construction under the direction and control of the CMAR for this contract, to procure, maintain, and keep continuously in force, the amounts and types of insurance conforming to the minimum requirements set forth in this section, unless otherwise agreed to beforehand by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. The required limits of insurance for Subcontractors shall be based on the value of their portion of the work as listed in the Subcontractor's contract with the CMAR. If the CMAR fails to comply with this Section, the CMAR shall be considered to be in default of Contract.
- 8.1.3 Unless specified herein or otherwise agreed to by the Owner, the required insurance shall be in effect prior to the commencement of work by the CMAR and shall continue in force until the latter of the following two conditions:
- A. Final acceptance by the Owner of the completed Work and acceptance of final payment by the CMAR.
  - B. At such time that the insurance is no longer required by the Owner under the terms of the Contract Documents.
- 8.1.4 As evidence of compliance with the insurance required by Section 8 (Insurance and Bonding), the CMAR shall furnish the Owner with all certificates of insurance (ACORD form 25-S or equivalent form approved by the Owner) prior to the award of the contract. The CMAR shall maintain original copies of Subcontractor insurance certificates for the duration of the Project and through the warranty period. Such records shall be furnished to the Owner upon request. The certificates for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on the insurer's behalf. All certificates along with the required endorsements shall be received and approved by the Owner before any work commences. The Owner's project number and project description shall be noted on each certificate of insurance. Upon renewal of any of the listed policies the Owner shall be furnished with replacement certificates immediately.
- 8.1.5 The Owner reserves the right to require and obtain complete, certified copies of any insurance policies required by the Contract Documents at any time. Complete copies of policies shall be furnished by the CMAR and by any Subcontractor or Sub-subcontractor within ten days after a written request is issued by the Owner. In lieu of a required certificate of insurance the CMAR may furnish an original binder signed by an authorized representative of the insurer(s) for a maximum of 60 days from the date of inception of the associated policy(ies).
- 8.1.6 With respect only to the bonds required by Section 8.6 (Performance and Payment Bonds), the CMAR shall furnish the Owner with properly executed bonds on forms acceptable to the Owner and shall have affixed to each bond a certified copy of a current power of attorney of the attorney-in-fact who executed the bond on behalf of the surety.
- 8.1.7 All insurance policies must be specifically endorsed to provide the Owner with 45 days written notice of cancellation, non-renewal or restriction of coverage. Until such time as the insurance is no longer required by the Owner, the CMAR shall provide the Owner with renewal or replacement evidence of insurance in the manner described herein no less than 30 days before the expiration or replacement of the required insurance.

- 8.1.8 Insurers or sureties shall have and maintain throughout the period for which coverage is required, an A.M. Best Company Rating of "A-" or better and an A.M. Best Company Financial Size Category of "VII" or better, unless specifically waived by the Owner.
- 8.1.9 Insurers or sureties providing the insurance or providing the bonds required by this Contract must be either:
- A. Authorized by certificates of authority issued by the Department of Insurance of the State of Nevada; or
  - B. With respect only to the coverage required by Section 8.2 (Workers Compensation), be authorized as a self-insurer under Nevada Revised Statutes Section 616.291.
- 8.1.10 The insurance provided by the CMAR and his Subcontractors pursuant to this Contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Owner or an Owner's official, officer, agent or employee shall be in excess of and not contributing to the insurance provided by or on behalf of the CMAR. Coverage maintained by the CMAR or his Subcontractors shall apply first, before any other insurance, on a primary basis, and without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Owner. Such approval shall not relieve the CMAR from payment of any deductible or self-insured retention.
- 8.1.11 The Owner and the Architect shall be named as additional insured on all insurance provided by the CMAR and his Subcontractors (except for workers compensation insurance).
- 8.1.12 If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with any of the foregoing minimum requirements, as soon as the CMAR has knowledge of any such failure, the CMAR shall immediately notify the Owner and immediately replace such insurance or bond with an insurer or surety meeting the requirements.
- 8.1.13 Neither approval by the Owner nor failure to disapprove the insurance furnished by the CMAR or his Subcontractors shall relieve the CMAR of the CMAR's full responsibility to provide the insurance and bonds required by the Contract. Further, compliance with the insurance and bond requirements of this Contract shall not limit the liability of the CMAR or his Subcontractors, employees or agents to the Owner or others, and shall be in addition to and not in lieu of any other remedy available to the Owner under this Contract or otherwise, including, but not limited to, the indemnity provisions stipulated in Subsection 3.15.

## 8.2 WORKERS COMPENSATION

- 8.2.1 The CMAR's Workers Compensation insurance shall comply with all statutory requirements of the State of Nevada. The CMAR's insurance or authorized self-insurance shall cover the CMAR, and to the extent not otherwise insured, his Subcontractors of every tier for those sources of liability which would be covered by the standard Workers Compensation Policy as prescribed in Nevada Revised Statutes Chapter 616 and Employers Liability coverage without restrictive endorsements. Each policy shall contain a waiver of subrogation against the Owner. In addition, where appropriate, coverage shall be included for any other applicable federal or state law, including but not limited to, the Longshore and Harbor Workers Compensation Act, Maritime including Jones Act, and Federal Employers Liability Act.
- 8.2.2 Subject to the restrictions of coverage found in the Nevada Industrial Insurance Act (Nevada Revised Statutes Chapter 616), there shall be no maximum limit on the amount of coverage for liability imposed by this Act, the Longshore and Harbor Workers Compensation Act, or any other coverage customarily

insured under Part One of a standard Workers Compensation Policy. The minimum amount of coverage for those coverages insured under Part Two of the Standard Workers Compensation Policy (inclusive of any amounts provided by an umbrella or excess policy) shall be those amounts stated under Subsection 8.7 (Required Limits of Insurance).

### 8.3 COMMERCIAL GENERAL LIABILITY

- 8.3.1 The CMAR's insurance shall cover the CMAR for those sources of liability which would be covered by Commercial General Liability Coverage Form CG-00-01 or a substitute form providing equivalent coverage at least as broad as filed for use in the State of Nevada by the Insurance Services Office, without the attachment of restrictive endorsements except that coverage for Medical Payments and Fire Damage Legal Liability may be eliminated. The policy shall cover all liability arising from premises-operations; broad form contractual liability; products and completed operations; use of CMARs and Subcontractors, personal injury; broad form property damage, and explosion, collapse, and underground work (XCU) if the Project involves such hazards.
- 8.3.2 The CMAR shall maintain per project coverage with separate limits of coverage applicable only to the work performed under the Contract. The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachment of ISO endorsement Amendment of Limits of Insurance (Designated Project or Premises) - to a Commercial General Liability Policy with the minimum amounts stated under Section 8.7 (Required Limits of Insurance).
- 8.3.3 The CMAR shall continue to maintain the required Commercial General Liability coverage along with Products/Completed Operations coverage, without restrictive endorsements, for a period of three years after the date that the Certificate of Substantial Completion is issued. The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 8.7 (Required Limits of Insurance).
- 8.3.4 The Owner and the Owner's officials, officers, and employees shall be included as additional insured with coverage afforded to be no more restrictive than that afforded by the applicable ISO Form (Additional Insured-Owners, Lessees, or Contractors Completed Operations Forms CG-20-10-10-01 and CG-20-37-10-01). Alternative Insured-Owners, Lessees, or Contractors endorsements may be acceptable when approved beforehand in writing by the Owner.

### 8.4 BUSINESS AUTO

- 8.4.1 The CMAR's insurance shall cover the CMAR for those sources of liability which would be covered by the latest occurrence form edition of the standard Business Auto Policy, including coverage for liability contractually assumed, as filed for use in the State of Nevada by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall be provided for owned, non-owned and hired autos used in connection with this Contract.
- 8.4.2 The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 8.7 (Required Limits of Insurance).

### 8.5 PROPERTY INSURANCE

- 8.5.1 If the Contract includes construction of or additions to buildings or structures, the CMAR shall provide all risk Builders Risk insurance on a form which is no more restrictive than that afforded by the latest editions of Insurance Services Office Builders Risk Coverage Form and Causes of Loss-Special Form, and

including full coverage through the completion of the project and for collapse during construction, and including coverage not only for work at the site, but also for materials to be used in construction but which may be located off-site and while in transit. If the Contract includes both construction of or additions to buildings or structures and the installation of machinery or equipment, Builders Risk insurance shall include coverage during post-installation testing. If the Contract is solely for the purpose of installation of machinery or equipment in existing buildings or structures, the CMAR shall provide an all risk Installation Floater including coverage during transit and during post-installation testing.

- 8.5.2 For Builders Risk the amount of insurance is to be 100% of the completed value of such addition(s), building(s) or structure(s), and recovery shall be based on completed replacement value of the entire structure. In the case of a remodel or renovation project, the replacement value shall be deemed to be \$500,000.
- 8.5.3 The amount of insurance for an Installation Floater shall be 100% of the installed replacement cost value, and recovery shall be based on the installed replacement cost.
- 8.5.4 The Builders Risk Policy or the Installation Floater must not be subject to any limitation or exclusion of coverage because of occupancy of the building(s), addition(s) or structure(s) in the course of construction or the putting to use of the machinery or equipment. The policy must be endorsed to provide that, subject to the notice of cancellation requirement, coverage will continue to apply until the Certificate of Substantial Completion is issued by the Owner for the building(s), building addition(s) or structure(s), or the machinery or equipment. Each policy shall contain a waiver of subrogation against the Owner.
- 8.5.5 The Owner and the Architect shall be named on the policy as additional insured.

## 8.6 PERFORMANCE AND PAYMENT BONDS

- 8.6.1 Performance and Payment Bonds are required for all contracts in excess of \$100,000 (per Nevada Revised Statutes Section 339.025). Douglas County School District reserves the right to require Performance and Payment Bonds as it sees fit for the protection of the District. Upon notification to the bidder of the acceptance of the bid, the successful bidder shall immediately cause to be executed all required Performance and Payment Bonds (including those required for Subcontractors) in a form acceptable to the Owner for 100% of the Contract Sum. The Performance and Payment Bonds shall be furnished no later than 15 calendar days after the Contract is awarded.
- 8.6.2 Each Subcontractor who will perform work in excess of \$50,000 or 1% of the Contract Sum, whichever is greater, shall furnish Performance and Payment Bonds, each in the amount of 100% of the Subcontractor's bid (per Nevada Revised Statutes Section 339.025). The required bonds shall be procured and furnished to the Owner prior to the Subcontractor performing any work on the Project. Failure of a Subcontractor to furnish the required bonds shall be sufficient justification for the Owner to require that the CMAR replace the Subcontractor, with another Subcontractor that is acceptable to the Owner, at no additional cost to the Owner.
- 8.6.3 The Owner reserves the right to require the CMAR to obtain Performance and Payment Bonds for any Subcontractor, each in the amount of 100% of the Subcontractor's bid. The Owner will pay the actual cost of any bond so required, not including any overhead and profit. If said bonds cannot be obtained within 60 calendar days of notification, the Subcontractor shall be replaced at no additional cost to the Owner.

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

8.7 REQUIRED LIMITS OF INSURANCE

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

8.7.2 Commercial General Liability

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

**Commercial General Liability (for contracts less than \$1,000,000)**

General Aggregate \$1,000,000

Products/Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any One Fire) \$NIL

Medical Expense (Any One Person) \$NIL

**Commercial General Liability (for contracts between \$1,000,000 and \$29,999,999)**

General Aggregate \$2,000,000

Products/Completed Operations Aggregate \$2,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any One Fire) \$NIL

Medical Expense (Any One Person) \$NIL

**Commercial General Liability (for contracts between \$30,000,000 and \$59,999,999)**

General Aggregate \$3,000,000

Products/Completed Operations Aggregate \$3,000,000

Personal and Advertising Injury \$3,000,000

Each Occurrence \$3,000,000

Fire Damage (Any One Fire) \$NIL

Medical Expense (Any One Person) \$NIL

**Commercial General Liability (for contracts \$60,000,000 and above)**

General Aggregate \$5,000,000

Products/Completed Operations Aggregate \$5,000,000

Personal and Advertising Injury \$5,000,000

Each Occurrence \$5,000,000

Fire Damage (Any One Fire) \$NIL

Medical Expense (Any One Person) \$NIL

**8.7.3 Workers Compensation/Employers Liability**

Including, if applicable, coverage for Longshore and Harbor Workers Compensation Act, Maritime including Jones Act, Federal Employers Liability Act and any other applicable federal or state law.

**Part One Statutory Limits for Nevada**

Part Two	Each Accident	<u>\$1,000,000</u>
Disease	Policy Limit	<u>\$1,000,000</u>
Disease	Each Employee	<u>\$1,000,000</u>

**8.7.4 Commercial Automobile Liability**

\$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limits may apply.



**\*\* Please Acknowledge you received this addendum in your proposal**

INQUIRIES RECEIVED	ANSWER
<p>1. In Article 7, Item A, of the RFP, reference is made to “Appendix A, Team Outline”. Is there an “Appendix A” form we should be using?</p>	<p>This document was mistakenly left out of the package upon issuance. It has been issued via email to all candidates, and is attached to this addendum.</p>
<p>2. In Article 7, Item B.3 of the RFP, reference is made to “Proposed Plan for Selection of Sub-consultants”. Should this read “subcontractors”?</p>	<p>This was a typographical error. The correct term is “subcontractors”.</p>
<p>3. Will you provide a definition of "sub-consultant" referenced in Article 7 and also in the scoring section of the RFP?</p>	<p>As stated above, the term “sub-consultant” was a typographical error. The correct term is “subcontractor”.</p>
<p>4. For Article 5.3 of the RFP, Builders Risk Insurance Quote, on renovation and modernization work, we not only insure the value of our contract work, but we also include coverage for a “value” of the existing facilities we’re working on. Does DCSD have a stated property value for these two Elementary Schools, or for the purposes of the RFP, should we just quote Builder’s Risk Insurance for the \$6 million published value of the construction work?</p>	<p>DCSD will require that the successful CMAR firm obtain Builder’s Risk Insurance for the estimated value of the proposed construction work only. The CMAR will not be asked to provide Course of Construction Insurance, or to protect the value of the property outside the construction scope, as DCSD holds P&amp;C coverage that provides for the contents of the existing building and property coverage.</p>



<p>5. Is it possible to have more than 20 pages for the Additional Requirements (Article 7)? Resumes, team outline, and approach items B.1) and B.2) based on the previous RFQ version submittal put us over 15, leaving 3 to 5 pages to respond to the rest of the requirements. We can make 20 pages work, and we will, but just thought to ask. 30 would be great, 35 would be better. Regarding page limits, may we assume as before that covers, tabs, letters, transmittals, and the RFQ forms are not included in the page count?</p>	<p>The RFP Article 7, Additional Submittal Requirements refers to a 20 single sided page or 10 double sided page limit. The District asks that the RFP responses include a table of contents and tabs for ease of reviewing. No cover letter is necessary. The table of contents, tabs, and required RFP forms will not count in the page limit. The attached RFP forms are excluded from the page limits. See question 11 below for the safety plan clarification.</p>
<p>6. Is there a question deadline for the RFQ process?</p>	<p>DCSD did not originally specify with a deadline. Per this addendum, inquiries will be accepted through Friday, September 10, 2010.</p>
<p>7. How will DCSD determine which, or if all, candidates should be interviewed?</p>	<p>The maximum and minimum number of firms to be interviewed is detailed in NRS. The maximum is 3 and the minimum is 2. The ranking of the firms will be completed based on the criteria in the RFP. DCSD has not yet determined if they will interview 2 or 3 firms. This will be done after the ranking of the firms.</p>



<p>8. How will DCSD order the interviews of the candidates?</p>	<p>DCSD will utilize a lottery type system to randomly assign appointment times to the CMAR's moving to the interview stage of the process.</p>
<p>9. Does DCSD prefer the CMAR Fee Proposal and the Additional Submittal Requirements (i.e.: team information, safety information, etc.) all bound in one submittal? Or does DCSD prefer the Fee Proposal bound in a separate envelope?</p>	<p>The total RFP response should be bound into one package.</p>
<p>10. If the answer to the question above is a separate envelope, does DCSD want 5 copies and one master of the fee proposal as well?</p>	<p>See Above Response; 5 copies and 1 MASTER of the final RFP submittal are still required.</p>
<p>11. With regard to the safety program requirements specified in Section 7.C, would the District consider allowing the required documentation to be attached as an Exhibit, or Appendix, separate from the designated page count?</p>	<p>Because DCSD would like to see as much information as possible regarding how each CMAR handles their safety programs, all submittals may include the log and recordkeeping documentation as an Exhibit to their response, that will be considered separate from the page limits specified. <u>This Exhibit should be kept to a maximum of 16 single sided pages or 8 double sided pages.</u></p>







**Required Submittal Forms not Included in Page Count, Con't:**

**ARTICLE 4: COST OF TRAVEL AND PER DIEM**

Provide the estimated cost of travel and per diem (if any) for all personnel proposed for this project. The cost of travel and per diem shall not be included in the burdened pay rates furnished under Article 2 and Article 3.

- A. During Pre-Construction \$ \_\_\_\_\_
- B. During Construction \$ \_\_\_\_\_
- C. **Total Items 1 & 2 Above** \$ \_\_\_\_\_

**ARTICLE 5: INSURANCE INFORMATION**

- A. General Liability Insurance Rate: \$ \_\_\_\_\_
- B. Bonding Rate: \$ \_\_\_\_\_
- C. General Liability Insurance Rate x Estimated Construction Budget (from RFQ) \$ \_\_\_\_\_
- D. Bonding Rate x Estimated Construction Budget (from RFQ) \$ \_\_\_\_\_
- E. Builder's Risk Insurance Cost (attach quote from insurance provider) \$ \_\_\_\_\_
- F. **Total of Items C through E above** \$ \_\_\_\_\_

**ARTICLE 6: PROPOSED FEES AND ADDITIONAL SUBMITTAL REQUIREMENTS**

- A. CMAR's Proposed Fee (for Pre-Construction Services) \$ \_\_\_\_\_
- B. CMAR's Proposed Construction Phase Fee (Percentage) \_\_\_\_\_%
- C. Proposed Fee % (from above) x Estimated Construction Budget (from RFQ) \$ \_\_\_\_\_
- D. **Total of Item's No. A and C above** \$ \_\_\_\_\_

The CMAR's Proposed Construction Phase Fee percentage listed above is to be utilized in determining the CMAR's Fee listed under Article 1, Item No. 3 in the CMAR GMP Proposal and is defined in the CMAR General Conditions of the Contract (Section 7.2, Payment Terms and Definitions).

**ARTICLE 13: CMAR SIGNATURE**

**Construction Manager at Risk**

CMAR Firm Name: \_\_\_\_\_  
 Authorized Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Date: \_\_\_\_\_





**\*\* Please Acknowledge you received this addendum in your proposal**

1. Insurance Requirements:

- a. Douglas County school district would like to make the following changes to section 8.7.2 in the *CMAR General Conditions of the Contract*.

The section should be changed from the first listing below (included in the above specified section of the RFP):

- ***Commercial General Liability (for contracts between \$1,000,000 and \$29,999,999)***  
*General Aggregate \$2,000,000*  
*Products/Completed Operations Aggregate \$2,000,000*  
*Personal and Advertising Injury \$1,000,000*  
*Each Occurrence \$1,000,000*  
*Fire Damage (Any One Fire) \$NIL*  
*Medical Expense (Any One Person) \$NIL*

To reflect the following:

- ***Commercial General Liability (for contracts between \$1,000,000 and \$29,999,999)***  
*General Aggregate \$8,000,000*  
*Products/Completed Operations Aggregate \$8,000,000*  
*Personal and Advertising Injury \$1,000,000*  
*Each Occurrence \$4,000,000*  
*Fire Damage (Any One Fire) \$NIL*  
*Medical Expense (Any One Person) \$NIL*

Contractors receiving this addendum should provide for this change in their cost estimates of the RFP submittal where indicated. Additionally, CMAR firm's will be required to furnish this coverage for **EACH PROJECT** awarded to that firm. The selected CMAR Firm will not be allowed to provide one instance of coverage for multiple-awarded projects.