



**BOARD OF SUPERVISORS AGENDA ITEM REPORT  
CONTRACTS / AWARDS / GRANTS**

Award  Contract  Grant

Requested Board Meeting Date: 12/21/21

\* = Mandatory, information must be provided

or Procurement Director Award

**\*Contractor/Vendor Name/Grantor (DBA):**

Hunter Contracting Co. (Headquarters: Gilbert, AZ)

**\*Project Title/Description:**

Construction Manager at Risk Services: Tucson Blvd. Diversion Structure Rehabilitation Project (3TDS20)

**\*Purpose:**

Award: Contract No. CT-WW-22-145. This award of contract is recommended to the highest qualified contractor in the amount of \$136,037.18 for a contract term from 12/21/21 to 12/31/22 to provide preconstruction services for Construction Manager at Risk Services: Tucson Blvd. Diversion Structure Rehabilitation Project (3TDS20). Administering Department: Regional Wastewater Reclamation.

**\*Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-2200001 was conducted in accordance with A.R.S. § 34-603 and Pima County Board of Supervisors Policy D 29.1. Three (3) responsive statements of qualifications were received and evaluated by a six (6) member committee using qualifications and experience-based selection criteria. Based upon the evaluation of the respondents' written representations of their qualifications and necessary due diligence, all three (3) respondents were invited to interviews. As a result of the combined scoring of the written statements of qualifications and interviews, the highest qualified contractor is recommended for award.

This project is expected to have multiple GMP's for construction services. The CMAR contractor's construction budget is set to not exceed \$4,500,000.00.

Board of Supervisors to authorize the Procurement Director to execute all modifications, including one or more Guaranteed Maximum Price (GMP) packages, provided that the cumulative total of all GMPs and Pre-construction Services does not exceed \$4,636,037.18 and the contract expiration date does not exceed December 31, 2022, which allows for all contract close-out activities and final submittals.

Attachments: Notice of Recommendation for Award and Contract.

**\*Program Goals/Predicted Outcomes:**

The Tucson Diversion Structure Project will allow for continued sewer service for Tucson's midtown by replacing the aging diversion structure currently at the end of its useful life. The project will decrease the potential for sanitary sewer overflows, create a safer asset for RWRD to maintain, as well as reduce odor concerns by constructing a more efficient sewer system.

**\*Public Benefit:**

The Tucson Diversion Structure Project will allow for continued sewer service for constituents within midtown Tucson. The project will create a more efficient gravity system thus reducing odors near or at the El Rio Vista Natural Resource Park.

**\*Metrics Available to Measure Performance:**

Completing the Tucson Diversion Structure Project according to the approved schedule and budget, while successfully receiving an Arizona Department of Environmental Quality discharge permit.

**\*Retroactive:**

No.

To: COB 12-16-21 (Q)  
Vers.: 1 - pgs. 115  
Revised 5/2020

PROCUREMENT DIRECTOR

**Contract / Award Information**

Document Type: CT Department Code: WW Contract Number (i.e., 15-123): 22-145  
Commencement Date: 12/21/21 Termination Date: 12/31/22 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
 Expense Amount: \$\* 136,037.18  Revenue Amount: \$ \_\_\_\_\_

\*Funding Source(s) required: Regional Wastewater Reclamation Department Obligations

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds?  Yes  No

If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_

Were insurance or indemnity clauses modified?  Yes  No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number?  Yes  No

If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
Prior Contract No. (Synergen/CMS): \_\_\_\_\_

Expense or  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included?  Yes  No If Yes \$ \_\_\_\_\_

\*Funding Source(s) required: \_\_\_\_\_

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)  Award  Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
 Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

\*All Funding Source(s) required: \_\_\_\_\_

\*Match funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? \_\_\_\_\_

Contact: Keith E. Rogers Digitally signed by Keith E. Rogers Date: 2021.12.13 14:19:51 -07'00' Scott Loomis Digitally signed by Scott Loomis Date: 2021.12.14 13:40:48 -07'00'

Department: Terri Spencer Digitally signed by Terri Spencer Date: 2021.12.14 15:01:40 -07'00' Telephone: 520-724-3542

Department Director Signature/Date: [Signature] 12/15/21

Deputy County Administrator Signature/Date: [Signature] 12/15/2021

County Administrator Signature/Date: [Signature] 12/14/2021  
(Required for Board Agenda/Addendum Items)



**NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: 12/07/2021

The Procurement Department hereby issues formal notice to respondents to Solicitation No. SFQ-PO-2200001 for Construction Manager at Risk Services – for construction of the Tucson Blvd. Diversion Structure Rehabilitation project (3TDS20) that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after 12/21/2021. Award is recommended to the most qualified Respondent.

**AWARDEE NAME**

**Hunter Contracting Co.**

**OTHER RESPONDENT NAMES**

B & F Contracting, Inc.  
KE&G Construction, Inc.

***NOTE: Pursuant to A.R.S. §34-603(H), only the names of the firms on the final list may be disclosed.***

Issued by: *Keith E. Rogers*, CPPB, Procurement Officer

Telephone Number: 520-724-3542

This notice is in compliance with Pima County Procurement Code §11.12.010(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at [SBE@pima.gov](mailto:SBE@pima.gov).

**PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT**

**PROJECT:** Construction Manager at Risk Services:  
Tucson Blvd. Diversion Structure Rehabilitation (3TDS20)

**CONTRACTOR:** Hunter Contracting Co.  
701 N Cooper Rd.  
Gilbert, AZ 85233

**CONTRACT NO.:** CT-WW-22-145

**AMOUNT:** \$136,037.18

**FUNDING:** REGIONAL WASTEWATER RECLAMATION DEPARTMENT OBLIGATIONS

**CONSTRUCTION MANAGER AT RISK**

**1. Parties, Background, and Authority.**

- 1.1. Parties. This Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called County, and Hunter Contracting Co., hereinafter called CMAR or Contractor, and collectively referred to as the Parties.
- 1.2. Background. County requires the services of a Construction Manager at Risk (CMAR) to perform pre-construction services and, upon mutual agreement of the Parties, construction services for the Tucson Blvd. Diversion Structure Rehabilitation (3TDS20) project (the "Project"). Additionally, County requires CMAR to participate as a member of the "Project Team", consisting of CMAR, the selected Design Professional(s), and County during pre-construction and other required phases of the Project. County intends to negotiate with CMAR regarding general conditions, construction fees, and other elements of the Guaranteed Maximum Price(s) for construction.
- 1.3. Authority. County conducted a competitive qualifications-based procurement for SFQ-PO-2200001. Based on an evaluation of the respondents' representations of their qualifications and necessary due diligence, County selected the most qualified applicant. CMAR has represented to County that CMAR has the requisite skill, expertise and resources to provide Construction Manager at Risk services and to construct the Project.

**2. Term and Extension Options.**

- 2.1. Initial Term. This Contract commences on 12/21/2021, and terminates on 12/31/2022, unless sooner terminated or further extended pursuant to the provisions of this Contract.
- 2.2. Extension Options. County and CMAR may extend the Contract termination date for purposes of project completion. Any modification or extension of the contract termination date must be by formal written amendment executed by the Parties.

**3. Scope of Work.**

- 3.1 CMAR will perform all required services in the Pre-Construction and Construction Services phases of the Project, as defined in Appendix "C", and provide all materials, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables, and services described in and reasonably inferable from the Contract Documents (collectively "Scope of Work", "Project Work" or "the Work"), as more fully described in Appendix "A" - Scope of Work (2 pages), to this Contract. This Contract covers only Pre-Construction Services and is not for Construction Services until such time as the Parties agree on a Guaranteed Maximum Price, including CMAR's Construction Phase Fee, and incorporate those terms into this Contract by amendment.

- 3.2 County has retained CMAR to provide construction and costing expertise as part of the Project Team. The Project Team's goal is to deliver a quality project, on schedule, at or below budget, that meets County's needs. CMAR acknowledges that active participation and contribution of its expertise in pre-construction is critical to the success of the Project and is the purpose of this Contract for pre-construction services. CMAR is responsible for leading the Project Team in the development of the cost model and schedule for design and construction of the project and will actively participate in design meetings and reviews and apply its best expertise and knowledge to identify and recommend alternatives to advance the Project. The use of terms like "constructability review" or "value engineering" to describe activities expected of CMAR is not meant to imply that CMAR will only provide after-the-fact design reviews. CMAR will actively contribute its expertise in advance of and during design on an ongoing basis and design will be accomplished collaboratively. The Parties want to avoid a process of designing, reviewing, and redesigning the project.
  - 3.3 CMAR will provide scheduling, budget, and cost expertise as part of Pre-Construction Services. CMAR's experts must be able to advise and render opinions to the Project Team on a near real-time basis concerning impacts to the Project budget and schedule arising from proposed design alternatives or design options being explored during the design process. The Project Team will use this advice to help decide if proposed alternatives or options should be pursued.
  - 3.4 CMAR will develop detailed project construction estimates; study labor conditions; research and provide advice regarding materials, alternatives, methods, means, constructability, and sequencing; and otherwise contribute to the advancement and development of the Project throughout the pre-construction phase. CMAR will update and refine the cost model as design progresses. CMAR will actively track construction costs throughout pre-construction and will advise the Project Team any time that the likely construction costs approach or exceed County's budget for construction.
  - 3.5 At such time during the pre-construction phase that County directs, CMAR will prepare a cost estimate and provide a GMP for construction of the Project (or for a segment of the Project, if construction is to be in phases) for County's review and approval. If the GMP proposed by CMAR is acceptable to County, the Parties will execute an amendment to this Contract to incorporate the GMP and supporting documents as may be necessary to define the scope of construction work covered by the GMP. If the GMP is not within County's construction budget or the budget for the project segment, if phased, County may terminate this Contract or act as otherwise provided in Appendix C – General Conditions (48 pages), Article 2.3.7.3. Acceptance by County of one or more phased GMPs does not obligate County to accept any succeeding GMP.
  - 3.6 The construction phase will begin upon acceptance and execution by County of CMAR's GMP, or the first GMP in the event of multiple GMPs. Construction will be accomplished in accordance with this Contract, including all Appendices and Exhibits, and the construction documents to be developed under this Contract. CMAR will provide efficient business administration and superintendence, and exercise its best judgment and skill to complete the Project in the most expeditious and economical manner consistent with the best interests of County.
4. **Pre-Construction Phase Fee and Guaranteed Maximum Price.**
- 4.1 County will pay CMAR a pre-construction phase fee for pre-construction services. CMAR's construction phase fee, plus the cost of the work (direct construction cost) plus a contingency, bonds, insurance and taxes (indirect construction costs) will comprise the GMP to be established in compliance with Appendix "B" - Construction Costing (10 pages) and Appendix "C" - General Conditions. Unless otherwise agreed, CMAR's GMP will include all required sales, use, franchise and other taxes in effect on the date of County approval of the GMP, as well as all applicable bond and insurance costs.
  - 4.2 The Pre-Construction Phase Fee will not exceed \$136,037.18 in accordance with the Pre-Construction Services Fee Proposal incorporated herein as Appendix "D" - Pre-Construction Services Fee Proposal (14 pages). The Construction phase fee will be a fixed fee, will be set forth in GMP described in Article 3.5 above and, if approved by County, will be incorporated into this Contract by written amendment.

- 4.3 If the GMP requires an adjustment due to changes in the Scope of Work during the construction phase, the cost of such changes will be priced under Article 10 of the General Conditions.
- 4.4 For County-caused construction delays, either agreed to or awarded, CMAR will provide all the necessary extended general conditions for a daily sum as provided for in Article 10.3 of the General Conditions.

**5. Procedure for Payment.**

- 5.1. For pre-construction services, CMAR will submit to County within one week of the last business day of each month CMAR's application for payment based on the percentage completed for each pre-construction design phase as agreed to by County. County will make payment for CMAR's construction services in accordance with Article 7 of the General Conditions. All construction costs which exceed the GMP and are not authorized by change order are to be paid by the CMAR and not County.
- 5.2. With respect to all work performed by CMAR, its subcontractors and consultants under this Contract, CMAR, its subcontractors and consultants will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by County. During performance of the work and for five years after final payment, CMAR will retain and will also require all subcontractors and any consultants to retain for review or audit by County all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the work. Upon request by County, CMAR will produce a legible copy or the original of any or all such records at any time during or after the work as County may request. CMAR will submit to County, upon request, all payrolls, reports, estimates, records and any other data concerning work performed or to be performed and concerning materials supplied or to be supplied, as well as subcontractor or consultant payment applications or invoices and such subcontractor's or consultant's progress payment checks. The requirements of this section must be provided for in all contracts between CMAR and its subcontractors and consultants.
- 5.3. For a period of five years from final payment under this Contract, County reserves the right to audit and question any payment made under this Article and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

**6. Contract Time, Milestones, and Liquidated Damages.**

- 6.1. Time is of the essence with respect to the dates and times set forth in the Contract documents. CMAR understands that the time(s) for completion(s) set forth in these documents are essential to the County and a material consideration for this Contract. The work and contract time commence within five days of CMAR's receipt of County's notice to proceed (NTP) unless the Parties agree otherwise in writing. CMAR will achieve substantial completion of the entire Work (the substantial completion date) no later than the date determined by mutual agreement of the parties at the time of GMP, subject to adjustments in accordance with the Contract Documents. CMAR will achieve interim milestones and substantial completion of identified portions or phases of the Work as identified in CMAR's project schedule incorporated in GMP, subject to adjustments in accordance with the Contract Documents. CMAR will achieve final completion of the entire work or portion or phase thereof within 60 calendar days after the date established for substantial completion of the entire work or corresponding portion or phase thereof, unless otherwise agreed in writing.
- 6.2. CMAR acknowledges that if it does not achieve substantial completion by the substantial completion date or by the dates in Article 6.1 above for identified portions or phases of the Work, County will suffer damages, which are difficult to accurately quantify and ascertain. CMAR agrees that if it does not achieve substantial completion for each portion or phase of the work, CMAR will pay County a dollar amount, as determined by mutual agreement of the Parties at the time of GMP, per day as liquidated damages for each calendar day that substantial completion for each portion or phase extends beyond the scheduled substantial completion date(s). If CMAR does not achieve final completion within the time period defined by Article 6.1. above, CMAR will pay County a dollar amount, as determined by mutual agreement of the Parties at the time of GMP, per day as liquidated damages for each calendar day that final completion

extends beyond the required date. The liquidated damages provided for herein are in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by County which are occasioned by any delay in CMAR achieving substantial completion or final completion on or after the established dates.

7. **Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

7.1 **Ratings.** Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A-VII. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

7.2 **Insurance Coverages and Limits.**

7.2.1 **Minimum Scope and Limits of Insurance:** Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

7.2.1.1 **Commercial General Liability (CGL)** – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, personal and advertising injury and products – completed operations.

7.2.1.2 **Business Automobile Liability** – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident.

7.2.1.3 **Workers' Compensation and Employers' Liability** - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.

7.3 **Additional Insurance Requirements:**

The policies will include, or be endorsed to include, as required by this written Contract, the following provisions:

7.3.1 **Additional Insured:** The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

7.3.2 **Subrogation:** The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

7.3.3 **Primary Insurance:** The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by County, its agents, officials, or employees shall be excess and not contributory insurance.

7.3.4 Insurance provided by Contractor shall not limit Contractor's liability assumed under the indemnification provisions of this Contract.

7.4 Notice of Cancellation:

Each Required Insurance policy must provide, and certificates specify, County will receive not less than 30 days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the County project or contract number and project description.

7.5 Verification of Coverage:

Contractor will furnish County with certificates of insurance as required by this Contract. An authorized representative of the insurer will sign the certificates.

7.5.1 All certificates and endorsements, as required by this Contract, are to be received and approved by County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

7.5.2 All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

7.6 Approval and Modifications:

County's Risk Management Department may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

8. **Bonds and Insurance.** CMAR will have and maintain the insurance coverage required by Section 7 above and will provide proof thereof to County before execution of this Contract. CMAR must provide payment and performance bonds and proof of insurance specific to construction to County prior to County's approval of the GMP, or if there are multiple GMPs, to the GMP to which they pertain. All insurance and bonds must conform to Article 6 of the General Conditions.

9. **Independent Contractor.** CMAR is an independent contractor and neither CMAR nor CMAR's officers, agents, employees, or subcontractors at any tier are employees of County and are not entitled to receive any of the fringe benefits associated with County employment, and will not be subject to the provisions of the County's merit system. CMAR is responsible for payment of all Federal, State and Local taxes associated with the compensation received by CMAR from County and will indemnify and hold County harmless from any and all liability which County may incur because of CMAR's failure to pay such taxes. CMAR is responsible for program development and operation without supervision by County.

10. **Books and Records; Audit.**

10.1. CMAR will keep and maintain proper and complete books, records and accounts. CMAR's records must include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, Contracts, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other Contracts, sources of information and matters that may in County's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and



unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to County in connection with the contractor's dealings with County (all of the foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- 10.1.1. Compliance with contract requirements for deliverables;
- 10.1.2. Compliance with approved plans and specifications;
- 10.1.3. Compliance with County's business ethics expectations,
  - 10.1.3.1. Compliance with contract provisions regarding the pricing of change orders,
  - 10.1.3.2. Accuracy of contractor representations regarding the pricing of invoices, and
  - 10.1.3.3. Accuracy of contractor representations related to claims submitted by the contractor or any of its payees

10.2. In addition to the normal paperwork documentation CMAR typically furnishes to County, in order to facilitate efficient use of County resources when reviewing and/or auditing the CMAR's billings and related reimbursable cost records, CMAR agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distrubution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

10.3. CMAR's records will upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any County representative or any outside representative engaged by County for the purpose of examining such

records. County's authorized representative(s) will have reasonable access to the contractor's facilities, will be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and will be provided adequate and appropriate work space in order to conduct audits in compliance with this article. County's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with contractor employees, field and agency labor, subcontractors, and vendors. County or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five years after its termination or cancellation or, if later, until any related proceeding or litigation has been closed or longer if required by law. If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to County (of any nature) by CMAR and/or CMAR's subcontractors in excess of \$100,000, in addition to making adjustments for the overcharges, CMAR will reimburse the reasonable actual cost of County's audit to County. CMAR must make any required adjustments or payments within a reasonable amount of time not to exceed 90 days from presentation of County's findings to CMAR.

- 10.4. CMAR will require all payees (examples of payees include but are not limited to subcontractors, material suppliers, insurance carriers) to comply with the provisions of this Article by including these requirements in the contract between contractor and payee. CMAR will ensure that all payees (including those entering into lump sum contracts) include the same audit provisions contained in this Contract.

## 11. CMAR Responsibilities.

- 11.1. CMAR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, CMAR will obtain the written approval of County. For the purposes of this Article, the key personnel are those personnel whose resumes were included in CMAR's statement of qualifications referenced in the recitals to this Contract or otherwise agreed to during contract negotiations and referenced in the CMAR's approved project organization chart, incorporated herein by reference. CMAR's performance of its obligations in preconstruction and active participation in the design process are critical to the success of the Project. Repeated failure by CMAR to carry out its obligations, without excuse for reasons outside the control of CMAR, is a ground for termination for default under Article 11 of the General Conditions. CMAR's performance of preconstruction services will be an important consideration in the determination whether to proceed to construction with CMAR and will be a factor for consideration in future procurements.
- 11.2. CMAR is responsible for the quality, technical accuracy, timely completion, and coordination of all its efforts and other services furnished by CMAR under this Contract. Without additional compensation, CMAR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided: This includes resolving any deficiencies arising out of the willful or negligent acts or omissions of CMAR found during or after the course of the services performed by or for CMAR under this contract, to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Arizona would exercise under similar conditions. CMAR's responsibility for these corrections or revisions exists regardless of County having knowledge of or condoning or accepting the products or the services. Any such resolution of deficiencies will be at no cost to County. Correction of errors and omissions discovered on architectural or engineering plans and specifications are the responsibility of the design professional.
- 11.3. If this contract or project is funded wholly or in part under a federal grant, CMAR will not subcontract work at any tier to any contractor, firm, consultant, individual or other entity named in the federal System for Award Management (<https://www.sam.gov>) with an open exclusion.
- 11.4. CMAR will select subcontractors in accordance with A.R.S. 34-603.C.2.(e)(i) and CMAR's Subcontractor Selection Plan, incorporated and attached herein by reference.
- 11.5. CMAR is responsible for all acts and omissions of its subcontractor(s), which includes its consultants for purposes of this Article, at every tier and of persons directly or indirectly employed by subcontractors at any tier and of persons for whose acts any of them may be liable to the same extent that CMAR is responsible for the acts and omissions of persons directly employed by CMAR. Nothing in this Contract

creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law. CMAR will ensure that all subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this contract. CMAR will not permit any subcontractor to perform work that does not fall within the scope of the subcontractor's license, except as may be permitted under the Rules of the Registrar of Contractors.

12. **Ownership of Documents and Models.** County, through its separate Contract with the Design Professional (DP), has and will continue to have, ownership of all drawings, specifications, and other documents and electronic data furnished by DP. All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CMAR under this contract vest in and become the property of County and will be delivered to County upon completion or termination of the services, but CMAR may retain and use copies thereof. County will not use the materials for any project other than the project for which it was prepared without the express permission of CMAR. In the event CMAR develops or generates a building information model (or equivalent) of the project, CMAR will provide one electronic copy of the final model on permanent media to County. CMAR's delivery of the model to County will constitute a grant to County of an irrevocable, paid-up, non-exclusive license to copy, use, display, disclose, or modify the model for any reasonable purpose for this project. CMAR agrees that the rights granted to County include the ability to provide a copy of the model to any subsequent contractor retained to maintain, modify or expand the project in any way. County agrees that, as between County and CMAR only, any modifications to the model by or for County after final completion and acceptance of this project is at County's sole risk and responsibility unless CMAR performs such modifications.

13. **Dispute Resolution.**

13.1. At the initial project meeting, the Parties will develop and establish an escalation procedure to be followed in the event of a failure to resolve an issue or disagreement at the field level. If disputes or disagreements arise, CMAR and County commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the work. The Parties will communicate regularly and work cooperatively to avoid or minimize disagreements or disputes. If disagreements or disputes occur, the Parties will work cooperatively at the field level to resolve the issues. CMAR and County will first attempt to resolve disputes or disagreements through discussions between CMAR's Representative and County's Representative. If the parties are not successful in reaching resolution at the field level, then the parties will pursue resolution through escalation. If the Parties remain in disagreement, they will follow the dispute resolution procedures below. Unless otherwise agreed in writing, CMAR will carry on the work and maintain its progress during the course of any unresolved claims and controversy proceedings, and County will continue to make payments as they fall due to CMAR in accordance with the contract documents.

13.2. In the event of a dispute between County and CMAR regarding any part of this Contract or the Contract Documents, or the Parties' obligations or performance hereunder, either party may institute the dispute resolution procedures set forth herein.

13.2.1. Mediation. If the Parties are unable to resolve the dispute through the special meeting and/or escalation, then upon written notice of either party of the desire to pursue resolution through mediation, a mediator, mutually acceptable to the parties and experienced in design and construction matters, will be appointed. The Parties will share the cost of the mediator. The mediator will be given any written statements of the parties and may review the project site and any relevant documents. The mediator will call a meeting of the parties within 10 days after appointment, which meeting will be attended by County's project manager, CMAR's project manager, and any other person who may be affected in any material respect by the resolution of such dispute. Such representatives will attempt in good faith to resolve the dispute. During such 10-day period, the mediator may meet with the parties separately. No minutes will be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, are non-binding, confidential and without prejudice to the rights and remedies of any party. The entire mediation process will be completed within 20 working days of the date upon which the initial special meeting is held, unless the

Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written Contract signed by the Parties.

13.2.2. Arbitration. If a dispute involving \$1,000,000 or less is not resolved pursuant to the procedures set forth above, then the Parties will submit the matter to binding arbitration, provided, however, that the arbitrators have no power to change any of the provisions of this Contract in any respect nor have they any power to make an award of reformation, and the jurisdiction of the arbitrators is hereby expressly limited accordingly. The following procedures will apply to arbitration:

13.2.2.1. Either party may serve the other with a written request for arbitration, which notice will also specify the name and address of one person designated to act as arbitrator on behalf of that party. Within 15 days after the service of such request, the other party will give to the first party written notice specifying the name and address of the person designated to act as arbitrator on its behalf. If the other party fails to so notify the first party within the time above specified, then the appointment of the second arbitrator will be made by the American Arbitration Association pursuant to the rules then in effect. The arbitrators chosen will meet within 10 days after the second arbitrator is appointed and will appoint a third arbitrator who is a competent, impartial person, and in the event of their being unable to agree upon such appointment within the foregoing 10-day period, the third arbitrator will be selected by the Parties if they can agree thereon within a further period of 15 days. If the Parties do not so agree, then either party on behalf of both may request the American Arbitration Association to appoint the third arbitrator.

13.2.2.2. The arbitration will be conducted in Pima County, Arizona, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any decision rendered will be based upon Arizona law.

13.2.2.3. The arbitrators will render their decision, upon the concurrence of at least two of their number, within 30 days after the appointment of the third arbitrator. Their decision will be in writing and counterpart copies delivered to each party. A decision in which any two of the arbitrators acting hereunder concur may be appealed directly to the Superior Court of Pima County within 30 days of the date of the decision. Unless so appealed, such decision is all cases final, binding and conclusive upon the Parties and judgment upon the decision may be entered by any court having jurisdiction thereof.

13.2.2.4. Unless otherwise required by the decision of the arbitrators, each party will pay the fees and expenses of the original arbitrator appointed by such party or in whose stead, as above provided, such arbitrator was appointed, and the fees of the third arbitrator, if any, will be borne equally by the parties. Each party will bear the expense of its own counsel, experts, and preparation and presentation of proof, in connection with all proceedings prior to the entry of a decision by the arbitrators.

13.2.3. If a dispute involving more than \$1,000,000 is not resolved pursuant to the procedures above, then the dispute may be submitted to the appropriate court of jurisdiction within Pima County.

#### 14. Governing Law and Remedies.

14.1. Arizona Law. Interpretation of the contract documents and any and all disputes arising under or in connection with the project, work and contract documents are governed by Arizona law. No suit or action may be commenced hereunder by any claimant other than in the Arizona Superior Court in Pima County, and only after all contractual procedures have been exhausted.

14.2. Remedies. Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this contract. Except as otherwise provided for herein, neither the County nor CMAR is liable to the other for any consequential losses or damages arising out of breach of contract, including but not limited to loss of profits.

**15. Non-availability of Funds.**

15.1. Non-appropriation. Notwithstanding any other provision in this Contract, this Contract may be terminated if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County has no further obligation to CMAR, other than to pay for services rendered prior to termination.

15.2. Bonds. If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, County's obligations under this contract may be canceled by the Pima County Board of Supervisors. If such a cancellation should be necessary, County will reimburse CMAR for all services rendered and non-cancelable commitments made prior to the cancellation in the manner set forth in Article 11 of the General Conditions.

16. **Assignment.** Neither County nor CMAR, without the written consent of the other, may assign, transfer, or sublet any portion or part of the work or the obligations required by a party under the contract documents.

17. **Non-Discrimination.** CMAR will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any Subcontractors. During the performance of this Contract, CMAR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

18. **Americans with Disabilities Act.** CMAR will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

19. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

20. **Business Ethics Standards for CMAR.** During the course of pursuing contracts with County and while performing contract work in accordance with this Contract, CMAR will maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the County's best interests as follows.

20.1. CMAR will take reasonable steps to prevent any actions or conditions which could result in a conflict with County's best interests. These obligations apply to the activities of CMAR's employees, agents, subcontractors, subcontractor employees, and consultants to CMAR. CMAR will include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000.00 in funds in connection with County's project.

20.2. CMAR's employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to County's representatives; employees or their relatives. In addition, CMAR employees, agents, or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

20.3. Upon request by County, CMAR will provide a certified Management Representation Letter executed by selected CMAR representatives in a form agreeable to County stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations. CMAR will notify a designated County representative within 48 hours of any instance where the CMAR becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.

20.4. CMAR will permit interviews of employees, reviews and audits of accounting or other records by County representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of CMAR's employees, agents, representatives, vendors, subcontractors, and other third parties paid by CMAR in their relations with County's current or former employees or employee relatives.

21. **Authority to Contract.** CMAR warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to CMAR or any third party by reason of such determination or by reason of this Contract.

22. **Non-Waiver.** The failure of County or CMAR to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

23. **Notices.** Any notice required or permitted to be given under this Contract must be in writing and be served by delivery or by certified mail upon the other Party as follows:

COUNTY:

Jackson Jenkins, Director  
Pima County Regional Wastewater Reclamation Department  
201 North Stone Avenue, 8<sup>th</sup> Floor  
Tucson, AZ 85701  
Phone: 520-724-6549  
Fax: 520-579-6006  
Email: [jjenkins@pima.gov](mailto:jjenkins@pima.gov)

CMAR:

Chuck English, President  
Hunter Contracting Co.  
701 N Cooper Rd.  
Gilbert, AZ 85233  
Phone: 480-892-0521  
Fax: 480-892-4932  
Email: [chucke@huntercontracting.com](mailto:chucke@huntercontracting.com)

24. **Contract Documents.**

24.1. Incorporation of Documents: This Contract is structured as a series of interrelated documents comprised of this Contract, associated appendixes, exhibits, and additional documents incorporated by reference.

24.2. Contact Documents: The "Contract Documents" are comprised of the following \:

- 24.2.1. This Contract, including exhibits, as it may be modified from time to time by the Parties.
- 24.2.2. Supplementary Conditions, if any, that modify the General Conditions.
- 24.2.3. Appendix C - General Conditions.
- 24.2.4. Special Conditions, if any, providing project-specific conditions and requirements.
- 24.2.5. Contractor Response to the Solicitation
- 24.2.6. The complete design as accepted by the County, including drawings, specifications, and County-approved design documents.
- 24.2.7. County's Project Criteria developed by County and Design Professional (if any).
- 24.2.8. Standard Specifications and similar type documents incorporated by reference.
- 24.2.9. County's Solicitation for Qualifications (SFQ) with all Addenda, Exhibits and CMAR's Statement of Qualifications in response to the SFQ.

24.3. Contract Interpretation. The Contract documents, including all Appendixes, Exhibits, attachments, amendments, change orders, and documents incorporated by reference are complementary and should be interpreted in harmony so as to avoid conflict or ambiguity. Terms, words and phrases used in the contract documents have the meanings defined in the General Conditions or, if not specifically defined, their ordinary and common meaning interpreted in a manner consistent with construction and design industry standards and practice. The objective of the contract documents is to provide a contractual framework and define the relationship between the parties within which the parties may complete the project on time and within the budget for construction.

- 24.4. Order of Precedence. In the event of any conflict between this contract and any other document, the contract governs, and in the event of a conflict between any Appendix or Exhibit and any other document, the order of precedence is as listed in 24.2 above. In the event of conflict between or among successive addenda, amendments, change orders, or modifications thereto, the later govern over the earlier in time, but only to the extent of any conflict.
25. **Compliance with County Sexual Harassment Policies**. CMAR will comply with County's current policy regarding sexual harassment. County prohibits sexual harassment by any person on County's premises or at any County-affiliated functions or facilities.
26. **Public Records**.
- 26.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of Construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by Contractor in any way related to this contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.
- 26.2. Records Marked Confidential.
- 26.2.1. Any information submitted related to this Contract that CMAR believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as confidential prior to submittal to County and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and must not include any information considered confidential.
- 26.2.2. Notwithstanding the above provisions, in the event records marked confidential are requested for public release pursuant to A.R.S. § 39-121 et seq., County will release records marked confidential 10 business days after the date of notice to the CMAR of the request for release, unless CMAR has, within the 10 day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CMAR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential, nor shall County be in any way financially responsible for any costs associated with securing such an order.
27. **Legal Arizona Workers Act Compliance**.
- 27.1. Compliance with Immigration Laws. Contractor warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each Subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 27.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any Subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 27.3. Remedies for Breach of Warranty. Any breach of Contractor's or any Subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a Subcontractor, and the subcontract is suspended or terminated as a result, Contractor will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement Subcontractor (subject to County approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

- 27.4. **Subcontractors.** Contractor will advise each Subcontractor of County's rights, and the Subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Contractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

- 27.5. **Costs.** Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay will be excusable delay for which Contractor is entitled to an extension of time, but not costs.
28. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
29. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
30. **Amendment.** This Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.
31. **Entire Contract.** This document constitutes the entire Contract between the parties and all prior or contemporaneous Contracts and understandings, oral or written, are hereby superseded and merged herein.
32. **Effective Date.** This contract will become effective when all parties have signed it. The date of this Contract will be the date the Contract is signed by the last party to sign it (as indicated by the date associated with that party's signature).

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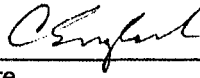
Each Party is signing this Contract on the date below that Party's signature.

APPROVED:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

CMAR:



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Charles English, President  
Name and Title (Please Print)

\_\_\_\_\_  
12/15/2021  
Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:



\_\_\_\_\_  
Deputy County Attorney

Stacey Roseberry

\_\_\_\_\_  
Name (Please Print)

12/15/2021

\_\_\_\_\_  
Date

## APPENDIX "A" – SCOPE OF WORK (2 pages)

### 1.1 PROJECT DESCRIPTION

Pima County Regional Wastewater Reclamation Department (RWRD) owns and operates a sanitary sewer diversion structure located at the intersection of the Roger Road alignment and Tucson Boulevard. The existing structure is a confined space and the high turbulence generates odor and hydrogen sulfide gas (H<sub>2</sub>S). The gates in the existing structure also do not function properly. RWRD intends to replace the existing structure with a new system that is corrosion resistant, reduces turbulence, and does not require entry into an above ground structure.

Pima County RWRD has (3) different incoming gravity sewer lines that converge at the Tucson Blvd. Diversion Structure with three (3) different out going gravity sewer lines. This project requires the design and installation of a new composite diversion structure with modifications to the surrounding sewer lines. The project's intent is to reduce turbulence and improve accessibility while maintaining the desired diversion capabilities in the existing lines. The primary function of this new structure will be to convey flows from the existing 54 inch sewer on Tucson Boulevard (heading north) to the existing 54 inch sewer on Roger Road (heading west). The diversion structure will also have the capability of diverting flow to the north to a 33 inch sewer, which siphons across the Rillito River. The structure will also be able to divert flow westward on Roger Road via a 30 inch sewer line. There are also additional 15 inch and 8 inch sewer lines coming into the location from Tucson Boulevard. All new manholes for the project will be corrosion resistant or composite manholes.

All construction documents, plans, specifications, flow metering, maps, and supporting documentation will be made available to the selected CMAR. RWRD anticipates completing construction of the project by Winter of 2022.

The CMAR shall work with, and shall be an integral part of the design team to provide pre-construction services and is expected to provide constructability review and recommendations of appropriate new technologies to the design team prior to submitting a GMP for the construction services of the project.

The CMAR shall develop a cost model for the project that shall be used to track construction costs during construction of the project. The cost model shall include all costs that will be included in the GMP, including bonds, insurance, general conditions, construction fee, etc. The CMAR shall advise RWRD immediately whenever the cost model indicates that the construction costs will or is likely to exceed RWRD's construction budget for the project. The CMAR shall be required to be actively involved in all public relations aspects of this project.

RWRD will designate a project manager to represent RWRD on this project. RWRD's project manager will be responsible to oversee and advise on overall contractual performance and compensation and will be responsible for the day-to-day activities and communications with RWRD's project team. The CMAR shall likewise specify a project manager that shall act as the CMAR's representative and be a member of the project's team throughout the duration of the contract.

RWRD's project manager will provide information and documentation, when available, as requested by the CMAR during and relating to its performance of the contract. The CMAR shall assume the responsibility of determining (field verifying, if necessary) the validity of such data provided.

Flow management planning, including preparation, submission, and revisions as necessary to limit impacts on operations and maintain permit compliance will be required.

### 2.1 CMAR METHODOLOGY:

#### 2.1.1 Phase I, Pre-Construction Services

The intent is to establish a relationship of trust and confidence between the CMAR and RWRD's representatives (the Project Engineer and the Project Manager). The project will be an "open book" job, whereby RWRD's representatives may attend any and all meetings and bid openings relating to the Project and have access to any and all books, accounts, and records of the CMAR relating to the Project.

RWRD will contract for the CMAR's services in phases. RWRD anticipates a minimum of two phases (Pre-Construction and Construction) with agreements and fee negotiations for each. For phase I, the CMAR will start by providing pre-construction services during the pre-construction phase of the project. At the completion of the pre-

construction phase or at any point in phase I prior to completion of design, as may be required by RWRD, the CMAR will be requested to provide a Guaranteed Maximum Price (GMP) to act as General Contractor for the construction and assume the risk of delivering the project on schedule at or under the GMP. Acceptance of the GMP by RWRD will initiate the second phase, which will include complete construction services for the actual completion of the project. RWRD reserves the right to phase work and/or use a fast track approach requiring multiple GMPs if deemed appropriate. It is possible that the phases may overlap. Acceptance of the GMP will be reflected by issuance of a construction phase services contract amendment. A Small Business Enterprise (SBE) goal, typically in the range of five to fifteen percent, will be set for the construction phase. Note: if multiple GMPs are required, separate SBE goals are required for each GMP.

RWRD reserves the right to end the CMAR's services at any time during Phase I, and continue with an alternate CMAR procurement or with a traditional Design-Bid-Build procurement if deemed in the best interests of the County. If this occurs, the CMAR shall be paid at the agreed upon rate or fee for services rendered. No anticipated profits will be paid for work not performed.

2.1.1.1 Pre-Construction services required of the CMAR will include the following:

- Team building/chartering (meetings)
- Project Scheduling/Management Planning
- Integration of RWRD project controls in CMAR project delivery strategy
- Value analysis/engineering
- Permit application assistance
- Identify potential odor control issues
- Field work as required to obtain permit / regulatory body clearances
- Constructability reviews
- Development and maintenance of a project cost model/budget
- Estimating/price guarantees (GMP's)
- Bid package coordination/strategy (subcontracting, SBE compliance)
- Identification and ordering strategy of long lead-time materials
- All Public Relations requirements for the duration of the project

2.1.2 Phase II, Construction

2.1.2.1 The selected firm will be charged with the development of the most cost effective phasing approach to deliver the construction of this project. It is foreseen that there will be substantial coordination with RWRD's personnel through the construction stages.

2.1.2.2 The CMAR shall be responsible for all construction means, methods, sequencing, scheduling and coordination, and selection of subcontractors to perform the work.

2.1.2.3 Construction Phase services required of the CMAR may include the following:

- Team management/coordination
- Coordination with
- Construction (Including Potential Construction Phasing)
- Scheduling/submittal process
- Cost control/change order management
- Subcontract management
- Field management
- Safety/QC programs
- All Public Relations requirements for the duration of the project
- Project close out
- Complete all work within the agreed upon GMP
- Warranty period services

(End of Appendix "A" – Scope of Work)

## APPENDIX "B"

### SUPPLEMENTAL PROVISIONS – CONSTRUCTION COSTING (10 pages)

#### ARTICLE 1 – GENERAL

The Guaranteed Maximum Price (GMP) will be developed as provided for in this Appendix. The GMP Proposal for the entire Work (or portions thereof) will be presented in a format acceptable to COUNTY, and will include the clarifications or assumptions upon which the GMP Proposal is based.

- A. Unless otherwise directed by COUNTY, each GMP proposal will include all of the following components:
1. Summary of the GMP: A summary of the GMP with a total for each of the components of the GMP defined in the Construction Provisions (i.e. "Cost of the Work", "CMAR Contingency", "Fee") as described and as shown in Attachment 1 to this GMP Appendix. If there will be multiple GMPs, then the GMP Summary will be presented in a spreadsheet format with each successive GMP in a separate column with the total GMP in the rightmost column.
  2. Scope of Work: a brief description of the Work to be performed for the Project or phase(s) to which the GMP proposal applies. Exclusions must be clearly stated.
  3. Schedule of Values – summary spreadsheet and backup documents: Spreadsheet with the estimated cost organized by subcontract categories, systems, etc., and used to review the CMAR's applications for progress payments. The supporting document(s) for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information will consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
  4. List of Plans and Specifications used for GMP Proposal: A list of the Plans and Specifications with latest issuance date including all amendments used in preparation of the GMP proposal. (Date stamped and signed by CMAR).
  5. List of clarifications, assumptions and exclusions: A list of the clarifications, assumptions, and exclusions by CMAR with regard to the Scope of Work in the GMP proposal, to supplement the information contained in the documents.
  6. Project Schedule in CPM format: A Critical Path Method (CPM) diagram construction schedule. An updated Project Management Plan will also be submitted with each GMP proposal.
  7. A cash-flow forecast based on the proposed construction schedule, schedule of values and GMP. If the construction covered by the GMP overlaps construction performed under a prior GMP, their cash flows will be consolidated into a single cash-flow statement.
  8. Subcontractor Selections / SBE Requirements / Utilization Form / Letters of Intent: A summary of the Subcontractor Selections, including an SBE requirements section addressing the goals set for the Project and the current status on meeting the Project goals. The Utilization form and Letters of Intent must be attached when subcontractor selection has been made prior to final GMP submittal. Subcontractor selections must conform to the approved Subcontractor Selection Plan.
- B. The submittal package must be kept as simple as possible and be submitted on 8 ½ x 11 inch sheets. Color or shading must be kept to a minimum. If used, the color or shading must not affect the reproduction of the submittal in black and white.

- C. The Parties may, by agreement, use a simplified GMP format for smaller projects or phases, so long as the documents supporting the GMP clearly delineate the Work—or that portion of the Work—to which the GMP applies and provide a schedule for completion of the Work.

## **ARTICLE 2 – COST OF THE WORK**

### **A. Cost of the Work**

The term "Cost of the Work" means costs necessarily incurred by CMAR in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the place of the Project except with prior consent of the COUNTY. The Cost of the Work includes only the items set forth in this **Article 2**.

### **B. Labor Costs**

1. Wages of construction workers directly employed by CMAR to perform the construction of the Work at the site or, with the COUNTY's approval, at off-site workshops. *Cost to be reimbursed will be the actual wages paid to the individuals performing the Work.*
2. Wages or salaries of CMAR's supervisory and administrative personnel when stationed at the site with the COUNTY's approval. No CMAR personnel stationed at CMAR's home or branch offices will be charged to the Cost of the Work. Non-field office based CMAR management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by CMAR's overhead.
3. Wages and salaries of CMAR's supervisory or administrative personnel who would normally be stationed at the field office but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
4. Employee bonuses and/or costs associated with Employee Stock Ownership Plans (ESOP) will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs covered by the CMAR's Fee.
5. Costs paid or incurred by CMAR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs B.1 through B.3.
6. When computing actual costs chargeable to the Cost of the Work for payroll taxes, CMAR will give proper consideration to the annual limitations of the wages subject to applicable payroll taxes. CMAR may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocated same to all jobs by individual based on the time worked on each job by the individual. Alternatively, CMAR may use an estimated net effective payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, if 50% of the wages paid to an employee during the year were chargeable to the Cost of the Work, then only 50% of the actual annual costs of payroll taxes would be allocable to the Cost of the Work.
7. Cost of the Work includes the actual net cost to CMAR for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this Contract. The actual net cost of worker's compensation will take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. CMAR may charge an estimated amount for worker's compensation

insurance costs, but will make appropriate cost adjustments to actual costs within forty-five (45) days of receipt of actual cost adjustments from the insurance carrier.

8. Overtime wages paid to onsite salaried personnel (if approved in advance in writing by COUNTY) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.
9. Any overtime premium or shift differential expense to be incurred by CMAR for hourly workers require COUNTY's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If CMAR is required to work overtime as a result of an inexcusable delay or other coordination problems caused by CMAR or anyone for whom they are responsible, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.
10. Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the project, and the actual verifiable fringe benefit costs incurred by CMAR for non-union individuals working on the project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the project:

Medical Insurance, Dental, Life & AD&D Insurance	12.00%
Holiday, vacation and other paid time not worked	10.00%
Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans (Note: ESOP related costs are covered by Contractor FEE)	10.00%

*Note: For non-union personnel, no other fringe benefit costs (other than the 3 specific categories listed immediately above) will be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this Contract are intended to be covered by CMAR FEE.*

**C. Subcontract Costs**

1. Payments made by CMAR to Subcontractors in accordance with the requirements of the subcontracts.
2. For Scope of Work bid packages typically performed by subcontractors, CMAR may "self-perform" such Work in accordance with **Sections 2.3.9.10 – 12 of the General Conditions**. All savings under any such subcontract for "self-performed Work" will be applied to reduce the Cost of the Work under this Contract and the Guaranteed Maximum Price of this Contract. For purposes of defining "self-performed Work" subject to this Contract, any division of CMAR, or any separate CMAR or subcontractor that is partially owned or wholly owned by the CMAR or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed Work". No self-performed Work will be allowed to be performed on a lump sum basis unless the County specifically accepts such an arrangement for designated trade(s) as part of an accepted GMP proposal.
3. CMAR (with respect to its suppliers, subcontractors and all lower tier subcontractors) will provide COUNTY advance written notice and will obtain COUNTY's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of five thousand dollars (\$5,000.00) prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). Sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement will not be included in the amounts owing to CMAR whether as Costs of the Work or as reasonable termination costs in the event of termination.

**D. Overhead**

1. Corporate overhead properly allocable to the project will be considered a reimbursable cost.
2. The amount or rate of contribution to overhead must be established by independent audit and the same or similar rate applied to other contracts with public or private entities.

**E. Costs of Materials and Equipment Incorporated in the Completed Construction**

1. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
2. Costs of materials described in the preceding Subparagraph E.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will become COUNTY's property at the completion of the Work or, at COUNTY's option, will be sold by the CMAR. Any amounts realized from such sales will be credited to COUNTY as a deduction from the Cost of the Work.
3. Proceeds from the sale of recyclable materials, scrap, waste, etc. will be credited to job cost.

**F. Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

1. Costs, including transportation and storage, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CMAR at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by CMAR. Cost for items previously used by CMAR means fair market value.
2. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by CMAR at the site, whether rented from CMAR or others, and costs of transportation, installation, minor repairs and replacements, dismantling, and removal thereof. Rates and quantities of equipment rented are subject to COUNTY's prior written approval.
3. The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals will be considered by CMAR before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment will be considered "job owned". At the completion of the project, CMAR will transfer title and possession of all remaining job-owned equipment to COUNTY, or CMAR may keep any such equipment for an appropriate fair market value credit to job cost mutually agreed to by COUNTY and CMAR.
4. Each piece of equipment to be rented will have hourly, daily, weekly, and monthly rates and the most economical rate available will be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the Work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the CMAR.
5. Reimbursable equipment rental rates for CMAR-owned equipment will not exceed the published rates in the latest edition of the "Rental Equipment Blue Book." If the Blue Book does not contain information related to the type of equipment rented, CMAR will be allowed to use a maximum equipment rental rate not greater than current competitive rental rates from local third party equipment rental companies.
6. The aggregate rentals chargeable for each piece of CMAR-owned tools or equipment will not exceed fifty percent (50%) of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals will be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations,

rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

7. Fair market value for used material and equipment as referred to in this Contract will mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
8. Rental charges for equipment which is not owned by CMAR or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for proper use in completion of the Work will be considered reimbursable and will be reimbursed at actual costs, as long as rental rates are generally competitive with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to COUNTY as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
9. Except for charges incurred in responding to an emergency, standby, or idle time charges for CMAR-owned equipment are allowable only to the extent specifically approved by COUNTY as part of a changed conditions claim or force account work. County will not pay for equipment idle time unless the equipment is engaged in County-authorized force account or other time and materials work, and then only for the time it is engaged in such work. When the authorized work is completed or the equipment ceases to be used for that work, payment for idle time stops. Standby and idle time charges not specifically so approved are not allowable. Allowable standby and idle time charges may not exceed eight (8) hours in any one working day nor forty (40) hours in any workweek. The charge for standby or idle time may not exceed thirty-three percent (33%) of the agreed rental rate for the particular piece of equipment. No standby or idle time charges will apply after the last use of equipment on the project for both CMAR-owned equipment and equipment rented from third parties.
10. All losses resulting from lost, damaged, or stolen tools and equipment will be the sole responsibility of CMAR, and not of COUNTY, and the cost of such losses is not reimbursable to CMAR under this Contract. CMAR will be solely responsible for replacement of any job-owned tools and equipment lost, damaged, or stolen while in CMAR's custody.
11. CMAR will maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost, or job-owned through aggregate rentals) and such inventory will be submitted to COUNTY each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.
12. All costs incurred for minor maintenance and repairs will be reimbursed at actual cost. Such costs include routine and preventive maintenance, minor repairs, and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.
13. Costs of removal of debris from the site.
14. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, and reasonable petty cash expenses of the site office.
15. That portion of the reasonable expenses of the CMAR's personnel incurred while traveling in discharge of duties connected with the Work.
16. No travel expenses will be reimbursed to CMAR's representatives unless Project related travel required them to travel to a destination more than fifty (50) miles from the project location. Any travel involving airfare will require advance written approval by COUNTY's authorized representative. If approved,



compensation for travel will be subject to COUNTY's current travel policy or, in absence thereof, the then current U.S. General Services Administration per diem rates.

17. Storage costs for materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by COUNTY.
18. Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$0.05) per square foot for prints and a maximum of five cents (\$0.05) per 8 1/2 by 11 inch page for offset print or photo copied documents. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

#### **G. Miscellaneous Costs**

1. That portion of insurance and bond premiums that can be directly attributed to this Contract:
2. All premiums for any insurance and bonds required for the project will reflect the net actual costs to CMAR after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.
3. The amount to be reimbursed to CMAR for all contractually required liability insurance will be actual costs not to exceed a total of one-half of one percent (0.5%) of the net reimbursable Cost of Work (not including liability insurance and not including fee). If CMAR's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this Contract provision, the difference will be considered to be covered by CMAR's fee.
4. In the event CMAR and COUNTY mutually agree that CMAR may utilize worker's compensation insurance programs that involve either self-insurance and/or large deductibles, the maximum amount to be considered reimbursable costs under this Contract will not exceed an amount equal to forty percent (40%) of the standard state worker's compensation rates applicable times CMAR straight time wages. Any CMAR costs incurred in connection with the agreed upon worker's compensation insurance program that exceeds the amount reimbursed by COUNTY under the formula in this paragraph will be considered to be covered by the CMAR's fee.
5. In the event that the CMAR and COUNTY mutually agree that CMAR may utilize a subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this Contract will be seven-tenths of one percent (0.7%) of the total amount of subcontracts enrolled in such an insurance program. Enrollment in any such program will be limited to subcontracts in excess of one hundred thousand dollars (\$100,000.00). Any CMAR costs incurred in connection with CMAR's elected subcontractor default insurance program that exceed the amount reimbursed by COUNTY under the formula in this paragraph will be considered to be covered by CMAR's fee. In the event CMAR and COUNTY mutually agree that CMAR may bond selected subcontractors rather than enroll them in the subcontractor default insurance program, the net cost to purchase any such bonds will be reimbursed in lieu of the seven-tenths of one percent (0.7%) allowance for insurance cost.
6. In the event that CMAR and COUNTY mutually agree that CMAR may utilize a CMAR Controlled Insurance Program (CCIP) the maximum to be considered reimbursable costs under this Contract will be two percent (2%) of the final agreed upon Guaranteed Maximum Price of this Contract. This two percent (2%) cost factor will cover all insurance required to be carried by the CMAR and all applicable subcontractors covered by this Contract (specifically worker's compensation insurance, general liability insurance, excess liability insurance, umbrella liability insurance). Any CMAR cost incurred in connection with the mutually agreed upon CCIP program that exceeds the amount reimbursed by COUNTY under the formula in this paragraph will be considered to be covered by CMAR's fee.
7. Sales, franchise, use, or other taxes imposed by a governmental authority that are related to the Work.

8. Fees and assessments for the building permit and for other permits, licenses, and inspections for which CMAR is required by the Contract Documents to pay.
9. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of Subparagraph 2.H.3.
10. Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against CMAR resulting from such suits or claims and payments of settlements made with COUNTY's consent. However, such costs of legal defenses, judgments and settlements will not be included in the calculation of CMAR's Fee or subject to the Guaranteed Maximum Price.
11. Data processing costs related to the Work, subject to 2.G.12, below.
12. Allowable data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day-to-day administration, management, and control of the Project. The aggregate charges for any such hardware will not exceed the FMV of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware will be turned over to COUNTY whenever it is no longer needed for the Project. If CMAR and COUNTY mutually agree that CMAR may keep the particular piece of hardware, the job costs will be credited with a mutually agreeable amount which will represent the FMV of the particular piece of hardware at the time it was no longer needed for the Project. Software or other costs associated with the use of computer programs will not be considered to be a reimbursable cost and will be considered to be covered by CMAR's Fee.
13. Deposits lost for causes other than CMAR's negligence or failure to fulfill a specific responsibility to COUNTY as set forth in the Contract Documents.
14. Expenses incurred in accordance with CMAR's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved **in advance** by COUNTY. Note: *At the current time, it is not anticipated that any such costs will be necessary to staff the project. If, however, CMAR determines that such expenses will be necessary to properly staff the job, COUNTY's advance written approval will be required before any such costs are considered reimbursable. In the event that COUNTY authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of fifty thousand dollars (\$50,000.00) per person. Any relocation cost incurred by CMAR in excess of the amount reimbursed by COUNTY will be considered to be covered by CMAR's FEE.*

#### H. Other Costs and Emergencies

1. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by COUNTY.
2. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.
3. Costs of repairing or correcting damaged or nonconforming Work executed by the CMAR, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of CMAR and only to the extent that the cost of repair or correction is not recoverable by CMAR from insurance, sureties, Subcontractors, or suppliers.
4. Costs incurred to provide site safety, including all Traffic Control; however, to the extent any cost referred to in this paragraph is incurred by reason of the negligence or other fault of CMAR or any Subcontractor or sub-subcontractor or is reimbursable by insurance or otherwise, then such costs will be excluded from the Cost of the Work.

**ARTICLE 3 - COSTS NOT TO BE REIMBURSED**

- A. The Cost of the Work will not include:
1. Expenses of CMAR's principal office and offices other than the site office and salaries and other compensation of personnel stationed at CMAR's principal office or offices other than the site office may not be charged directly to the project. Such expenses will be included in overhead.
  2. Costs of CMAR's home office computer services or other outside computer processing services will be considered overhead and general expense. Accordingly, CMAR should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at CMAR's home or branch offices, or other outside service locations.
  3. CMAR's capital expenses, including interest on CMAR's capital employed for the Work.
  4. Rental costs of machinery and equipment, except as specifically provided in Subparagraph 2.F.2 above.
  5. Except as provided in Subparagraph 2.H.3 above, costs due to the negligence or failure to fulfill a specific responsibility of CMAR, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.
- B. Any cost not specifically and expressly described in Article 2.
- C. Costs, other than costs included in Change Orders approved by COUNTY, that would cause the Guaranteed Maximum Price to be exceeded.
- D. All costs, if any, in excess of the cumulative GMP as set forth in the Contract.
- E. Legal expenses incurred in prosecuting or defending claims in mediation or litigation (including without limitation, legal expenses incurred pursuant to defending and indemnifying COUNTY and other Covered Parties).

**ARTICLE 4 - DISCOUNTS, REBATES AND REFUNDS**

- A. Cash discounts obtained on payments made by CMAR will accrue to COUNTY if (1) before making the payment, CMAR included them in an Application for Payment and received payment therefor from COUNTY, or (2) COUNTY has deposited funds with CMAR with which to make payments; otherwise, cash discounts will accrue to CMAR. Trade discounts, rebates, refunds, and amounts received from sales or surplus materials and equipment will accrue to COUNTY, and CMAR will make provisions so that they can be secured.
1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any CMAR controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.
  2. "Cash" discounts which may accrue to CMAR will be limited to a maximum of one and one-half percent (1.5%) of invoice cost. Any portion of "Cash" discounts greater than one and one-half percent (1.5%) will automatically accrue to COUNTY if CMAR is eligible to take advantage of the discounts.
- B. Amounts that accrue to COUNTY in accordance with the provisions of Paragraph 4.A.1 will be credited to COUNTY as a deduction from the Cost of the Work.

**ARTICLE 5 - CONTINGENCY FUND**

**Generally:**

- A. The GMP may include a CMAR Contingency in the amount stated in the GMP Summary. Each line item of the GMP Summary for which risk remains after the Pre-construction Phase will carry an agreed on contingency that can be traced back to the initial cost model. Subject to the terms of the Contract Documents and with prior notification to and approval by COUNTY, CMAR will be entitled to allocate from and apply against the CMAR Contingency increases in the Cost of the Work that could not have been reasonably anticipated by a CMAR using the standard of care and skill that a professional CMAR in Arizona would exercise under similar conditions at the time the GMP was established or for increases in General Condition Costs. COUNTY may disallow such CMAR Contingency use and deny reimbursement in the absence of prior notice or if COUNTY determines that the use was not consistent with the Contract Documents.
- B. CMAR may not apply, use, or allocate from the CMAR Contingency any amounts for any of the foregoing purposes that are the result of a material breach or material failure to perform by CMAR, any subcontractor, or vendor (except as necessary to replace any subcontractor, or vendor because of the bankruptcy or failure of such entity to perform), or any entity for which any of them are liable or responsible at law or under the Contract Documents, or for any non-allowable costs of the Work.
- C. Each application of the CMAR contingency by CMAR will be reflected (with narrative explanation) on the Application for Progress Payment for the period during which CMAR makes such application. Application of CMAR Contingency to any particular risk event should not exceed the agreed associated amount of the CMAR Contingency previously assigned to the specific line item in the GMP. Any portion of the CMAR Contingency remaining unapplied at final completion will be a credit against and reduce the GMP. When CMAR utilizes CMAR's Contingency funds, CMAR will make the appropriate changes to the Schedule of Values with the next regular progress payment request. CMAR will deduct the amount of CMAR's Contingency funds used from CMAR's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If CMAR's Contingency funds are used for a new line item that was not included in the original Schedule of Values, CMAR will so indicate.
- D. CMAR Contingency is not cumulative across multiple GMPs.
- E. COUNTY's Contingency is a sum of money in the Contract but not included in the GMP that may be used at the discretion of COUNTY to cover any increases in Project costs that result from COUNTY directed changes, changed site conditions, or additional costs of Allowance Items the cost of which exceeds the Allowance therefor. COUNTY's Contingency will be added to the GMP amount provided by CMAR, the sum of which will be the full Contract price for construction. Markups for Construction Fee, taxes, and overhead will be applied by CMAR at the time that COUNTY's Contingency is used.
- F. COUNTY's Contingency and CMAR Contingency will not be combined into a single project contingency.

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**ATTACHMENT 1 TO APPENDIX "B"  
GMP Summary Format**

<b>CONSTRUCTION</b>	<b>AMOUNT</b>
<b>CONSTRUCTION COSTS:</b>	
Cost of Construction	\$
CMAR Contingency	\$
<b><i>Subtotal Direct Construction Costs</i></b>	<b>\$</b>
<b>INDIRECT CONSTRUCTION COSTS:</b>	
General Conditions	\$
Overhead	\$
Insurance	\$
Payment and Performance Bonds	\$
<b>Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance</b>	<b>\$</b>
Construction Fee (As a percentage of Subtotal above or to exclude any items above)	
<b>Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance and Fee</b>	
Arizona Gross Receipts Tax	\$
<b>Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance, Fee and Tax</b>	<b>\$</b>
<b>GUARANTEED MAXIMUM PRICE (GMP)</b>	<b>\$</b>
<b>OTHER PROJECT COSTS:</b>	
COUNTY Contingency	\$
<b>TOTAL CONTRACT COST</b>	<b>\$</b>

**END APPENDIX "B" – SUPPLEMENTAL PROVISIONS—CONSTRUCTION COSTING**

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## ARTICLE 1 – GENERAL ARTICLES

### 1.1 MUTUAL OBLIGATIONS

COUNTY, Construction Manager at Risk (CMAR), and Design Professional (DP) commit, at all times, to cooperate fully with each other, and proceed on the basis of trust, confidence, and good faith to permit each party to realize the benefits expected and afforded under the Contract Documents, which benefits include the satisfactory and timely completion of the Project and performance of all obligations required by or inferable from the Contract Documents.

### 1.2 BASIC DEFINITIONS

- 1.2.1 "Actual Cost of the Work" is the aggregate amount of CMAR Direct Construction Costs and Indirect Construction Costs properly and actually chargeable to COUNTY when calculated under the provisions of **Appendix "B" of the CMAR Contract** throughout the Project up to the time of Final Completion.
- 1.2.2 "Allowances" are items established by COUNTY in the GMP as estimates for the cost of items of included in the Work. To the extent that the Actual Cost of the Work is lesser or greater than the corresponding estimate, the GMP will be reduced or increased by Change Order with such amount being added to or taken from COUNTY's Contingency.
- 1.2.3 "Bidding Contingency", or "CMAR Contingency" means that part of the Guaranteed Maximum Price (GMP) the CMAR may use during the Bidding or Construction Phase as provided in these General Conditions at 7.11, to cover any excess of the amount bid by a subcontractor over the amount for that Work in the GMP, or to cover legitimate unforeseen construction expenses once construction begins. Contingency may not be used to cover the cost of any Work on the Project after issuance of the Certificate of Final Completion.
- 1.2.4 "CMAR Authorization" – Chapter 6 of Title 34, Arizona Revised Statutes
- 1.2.5 "CMAR" means the CMAR and all persons and entities identified as members of the CMAR team in the CMAR's response to COUNTY's SFQ that led to the Contract with all Contract Amendments, and any substitutes permitted under the terms of the Contract, and these General Conditions. The CMAR participates in the Pre-Construction Phase as set forth in Pre-Construction Phase Services Contract by, among other things, developing a cost model and refining it during design to ensure construction costs remain within COUNTY's budget, doing value engineering and reviewing constructability, preparing schedules, and identifying the life-cycle implications of alternate designs, systems, and materials. **During construction, the CMAR assumes all risk for price and schedule under the Contract and its GMP, except as otherwise provided in the Contract.**
- 1.2.6 "Construction General Conditions" include, but are not limited to, the following types of costs during construction: Project Director costs directly attributable to time expended in execution of the project, whether on- or offsite; payroll costs for project manager or construction manager for work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; general support workers not included in direct labor costs (e.g. loading/unloading, clean-up, etc.); onsite administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; and fees for licenses. General Conditions specifically exclude, without limitation, the following: Home (off-site) Expenses, Profit & Overhead; Home Office Personnel such as Corporate Executive, Project Executive; Home Office Staff Transportation & Travel Costs; Home Office Accounting & Contract Forms; Legal Expenses; Project Staff Moving Expense; off-site Staff Training & Education; Pre-Mobilization Office Space; off-site Equipment & Supplies; Forms; Estimating & Value/Constructability Analysis; Warranty Coordination; Legal Expenses, Contractor Yard not Dedicated to Project, Contractor Association Fees, Licenses & Memberships; Cost over GMP, Corrective Work, Bonuses, Cost of Living Allowance, marketing expenses, corporate sponsorships and entertainment, and Promotional or Celebratory Expenses the CMAR incurs while performing and completing the Project. The Parties acknowledge that some portion of the General



Conditions represent upfront costs associated with mobilization and startup of construction. These amounts will be deducted from the total amount of General Conditions in the GMP and the balance will be divided by the number of days allowed for performance to arrive at a fixed daily rate for use in estimating the amount, if any, of the adjustment for General Conditions associated with changes in Contract Time or for the number of workdays in any particular month.

- 1.2.7 "Construction Documents" are the plans and specifications prepared by the DP for the Project, approved by COUNTY, and incorporated into the Contract by reference after such approval, to be used to construct the Project. All Contract Amendments, Change Orders, and other modifications to the Construction Documents must be approved by COUNTY prior to incorporation into the Contract.
- 1.2.8 "Construction Phase Fee" includes profit and unallowable costs, and overhead in the case of vertical construction. The Construction Phase Fee will initially be calculated not to exceed five percent (5%) of Direct Construction Cost only, and then will be fixed as a dollar amount as mutually negotiated and agreed to by the Parties. Overhead will be treated as described in 1.2.24.
- 1.2.9 "Contract Float" - If the CPM schedule of the Work anticipates early completion of all or any part of the Work, Contract Float is the number of calendar days between CMAR's anticipated date for early completion of all or any such part of the Work and the corresponding specified Contract Time. It is owned jointly by COUNTY and CMAR.
- 1.2.10 "Contract Time" is the time allotted in the Contract Documents for completion of the Work.
- 1.2.11 "Cost of the Work" consists of those items of Work which are paid for by COUNTY to the CMAR consisting of those Direct Construction Costs and Indirect Construction Costs set forth as allowable in **Appendix "C" Construction Costing**.
- 1.2.12 "Day" as used in these General Conditions refers to a calendar day unless otherwise denoted.
- 1.2.13 "Deliverables" - the Work product prepared by the CMAR within the definition of the Scope of Work in the Contract. Some of these deliverables provided by the CMAR during the Pre-Construction Phase are the Cost Model, Project Schedule, Schedule of Values, Evaluations of Alternatives, Procurement Strategies, proposed SBE Utilization, Subcontractor and Supplier bid packages and Contracts.
- 1.2.14 Design Professional ("DP") or Engineer is contracted with COUNTY, and a) is a qualified professional properly licensed in the State of Arizona to furnish applicable design services (and construction administration services, if so designated by COUNTY), and b) is responsible for the review of submittals, responding to CMAR Requests for Information (RFI), and Substantial Completion, if so designated.
- 1.2.15 "Design Submission Documents" consist of the drawings and specifications submitted at specific milestones in the design effort by the DP and other documents prepared by the CMAR that are submitted for COUNTY's approval for each milestone in Project design. Because design milestones may vary from project to project, COUNTY will notify CMAR in writing of the milestones applicable to the project covered by this Contract. Such milestones will be as binding as if set forth herein.
- 1.2.16 Direct Construction Cost is the sum of all applicable Construction General Conditions costs, subcontractor costs, costs of self-performed Work (if approved in writing in advance by COUNTY), Allowances and Contingencies. Contingencies specifically include Bidding and Construction Contingency, Design Contingency, and Schedule Contingency, as applicable.
- 1.2.17 "Final Completion" is defined as one hundred percent (100%) completion of all Work described by or reasonably inferred from the Project Criteria and Contract Documents, including but not limited to all punch lists, Close-Out Documents, and COUNTY training/start up activities, if included.
- 1.2.18 "Guaranteed Maximum Price" (GMP) is the dollar amount that the CMAR guarantees to be the maximum amount due from COUNTY to the CMAR under the Contract for Construction Phase services. It is the

sum of CMAR's Construction Phase Fee, the Cost of the Work, and Contingencies and Allowances established in accordance with the Contract. The GMP is subject to additions or deductions due to changes in the Scope of Work. All costs, which exceed the GMP and are not authorized by written Change Order, are to be paid by the CMAR and not COUNTY.

- 1.2.19 Governmental Agency is any unit of federal, state, or local government with regulatory authority over any aspect of the Work.
- 1.2.20 "Hazardous Material" means any waste, substance, object, or material deemed hazardous under federal, state, or local law, including "hazardous substance" as defined under CERCLA, "hazardous waste" as defined under RCRA, and "hazardous material" as defined under US DOT regulations (49 CFR 100-180).
- 1.2.21 Indirect Construction Cost is the sum of all applicable insurance costs, bond costs and applicable sales or use taxes, but excludes Construction Phase Fee.
- 1.2.22 "Legal Requirements" include all regulations, policies, procedures, and practices of COUNTY and all applicable rules, laws, codes, ordinances, and regulations of any federal, state, or local government or quasi-governmental entity having jurisdiction over the Work, the practices involved in the Work, or any Work performed.
- 1.2.23 "Open Book Cost" is the Actual Cost of the Work as compiled and recorded in accordance with the provisions of Subsection 2.1.14 of these General Conditions.
- 1.2.24 "Overhead" is generally comprised of those items specifically excluded from General Conditions in paragraph 1.2.6 except for Estimating and Value/Constructability Analysis and profit. If this Contract is for vertical construction, Overhead will be included in the Construction Fee. If this Contract is not for vertical construction, then Overhead will be separately stated in the GMP Summary. Job Overhead will be included in General Conditions.
- 1.2.25 "Partnering or Teaming" is a mutual effort by all parties involved in the Project, principally COUNTY, the DP, and the CMAR, to cooperate and coordinate efforts to achieve the final result intended by the Project criteria. All involved use their expertise for the benefit of all. Partnering requires flexibility and appreciation of the positions of other parties and willingness to make compromises for the benefit of all. COUNTY has the exclusive right to decide whether to use Partnering on the Project and will indicate its decision during the Pre-Construction Phase.
- 1.2.26 "Pre-Construction Phase Fee" includes all direct and indirect costs of CMAR in providing Pre-Construction Phase Services until completion of the Construction Documents and the award of all bid packages, plus associated Overhead and profit.
- 1.2.27 "Project Budget" is the funding available to the COUNTY for the total cost of the Project, including the DP, CMAR's Pre-Construction Phase Fee, the GMP (including CMAR's Construction Phase Fee, Construction Services, and Contingencies), permit fees, and other costs necessary to achieve Final Completion of the Project.
- 1.2.28 "Project Criteria" developed by or for COUNTY describe COUNTY's program, requirements and objectives for the Project, including (if vertical) use, space, price, time, site, utility, parking, and expandability requirements, as well as all submittal requirements and other requirements affecting CMAR's performance of its Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by or for COUNTY.
- 1.2.29 "Project Manager" refers to the COUNTY Representative that is responsible to COUNTY for the Project completion within COUNTY established Schedule, Budget and Scope. In this document "Project Manager" is the same as "COUNTY."

- 1.2.30 "Punch List" are those minor items of Work identified and listed by COUNTY or DP and agreed to be completed by CMAR after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended.
- 1.2.31 "Savings" is the difference, if any, between the GMP and the Actual Cost of the Work and will be allocated as set forth in Article 7. Amount of savings is to be determined by COUNTY with such assistance as COUNTY requests of CMAR and is to be based on the GMP in effect on the date of Final Completion of the entire Work.
- 1.2.32 "Site" is the land and other areas on which the Project is located.
- 1.2.33 "Subcontractor" (of any tier) is any entity or person who performs a portion of the Work, on or off site, directly on behalf of the CMAR, including any materials, workers and suppliers, and includes all employees, agents and authorized representatives of such entities or persons.
- 1.2.34 "Substantial Completion" is the date on which CMAR's Work, or an agreed upon portion of the Work, is sufficiently complete, as determined by the DP or COUNTY's issuance of a Certificate of Substantial Completion, so that COUNTY can fully occupy and utilize the Project, or a portion thereof, for the purposes for which it is intended. In order to achieve substantial completion, all Work must be complete, including all tests and inspections, except for items included on the approved punch list.
- 1.2.35 "Total Float" is the number of calendar days by which the Work or any part of the Work may be delayed without necessarily extending a pertinent Contract Time. Total Float is at least equal to Contract Float.
- 1.2.36 "Value Engineering Proposal" is a modification to the Work proposed by the CMAR after the Effective Date of the Contract for the purpose of reducing the total cost of construction while still delivering a quality and functional Project. Value Engineering is part of the broader goal of obtaining optimum value for each dollar COUNTY spends on the Project.
- 1.2.37 "Work" is comprised of all activities required in order to complete the Project as defined by the Project Criteria and Contract Documents, including procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents, or from prevailing trade usage and custom.

### **1.3 CONTRACT GENERAL CONDITIONS**

These provisions set forth the mutual understanding and agreement of the Parties regarding the Contract general conditions or subjects addressed therein.

- 1.3.1 COUNTY has hired or will hire a DP to design the Project.
- 1.3.2 The design for the Project may not be complete at a) the time the GMP is agreed to; b) the time of execution of the Contract; or c) both a) and b).
- 1.3.3 CMAR will cooperate and interact with and advise the DP in producing a completed design for the Project that is acceptable to COUNTY, all as more fully described in the Contract Documents.
- 1.3.4 When the Design Documents are complete and requisite approvals obtained and are then accepted by COUNTY, they become part of the Contract Documents without further action by the Parties as though they were specifically set forth therein at the time of execution of the Contract.

## **ARTICLE 2 – CMAR'S SERVICES AND RESPONSIBILITIES**

### **2.1 GENERAL SERVICES**

- 2.1.1 CMAR's Representative will attend all meetings and assist COUNTY during the Pre-Construction Phase in accordance with these General Conditions. During the Construction Phase, the CMAR's

Representative, and Superintendent as necessary, will be at the Site at all times when Work is being performed, and will have the necessary expertise and experience required to properly supervise the Work. CMAR's Representative will communicate regularly with COUNTY and DP and be vested with the authority to act on behalf of CMAR as to all matters. The expectation is that meetings will be collaborative among the COUNTY, DP and CMAR as described below.

- 2.1.1.1 The CMAR, DP and COUNTY will attend all regular meetings, including rolling design reviews, and such additional meetings that are called as provided below.
- 2.1.1.2 During the Design Phase all regular meetings will be scheduled by the DP with the agreement of the CMAR and approval of COUNTY. Unless otherwise agreed, meetings will be held weekly for the purpose of tracking design progress and consistency with COUNTY's requirements. DP will be responsible for tracking and reporting on the design evolution log. CMAR will be responsible at such meetings for cost and scope tracking, early identification of long-lead items, and making recommendations regarding constructability, construction sequencing, materials, and other factors that can have a material impact on cost or schedule. COUNTY will schedule all additional meetings.
- 2.1.1.3 During the Design Phase, DP will take minutes at each meeting and distribute draft minutes within three (3) business days after each meeting. The CMAR and COUNTY will promptly review the minutes of each meeting and deliver any comments to the DP. The DP will promptly issue final minutes of each meeting, which will be approved by DP, CMAR and COUNTY.
- 2.1.1.4 At the commencement of the Construction Phase, COUNTY, CMAR, and DP will meet to review cooperation, coordination, and if applicable, partnering during the construction phase and to establish procedures governing, among other matters, submittals and scheduling of site activities.
- 2.1.1.5 During the Construction Phase there will be weekly progress meetings of the DP, CMAR, and COUNTY. The CMAR will schedule and conduct the progress meetings during the Construction Phase. The weekly progress meetings will be used to discuss jointly such matters as procedures, progress, scheduling, submittals, requests for information (RFI), any Work deficiencies, any other actual problems or potential problems, fixes to and limits on actual problems, and ways to avoid, limit, or fix potential problems. At each meeting, the CMAR will provide and discuss a CPM-based look ahead schedule of construction activities to be accomplished in the next three weeks. Presentation of the look-ahead does not substitute for the twenty-four (24) hour advance notice required in section 2.6.10.8 prior to all special inspections. COUNTY, DP, and CMAR will contribute their good faith efforts in such discussions to find ways (i) to complete the Project within the Contract Time(s) in accordance with the Construction Documents and the other CMAR Contract Documents and within the Guaranteed Maximum Price; (ii) to limit and fix actual problems; (iii) to anticipate and then avoid, limit or fix potential problems; and (iv) to discuss and decide other matters brought up by COUNTY, DP, or CMAR. None of these discussions will affect or impair the respective rights, responsibilities and obligations of DP, COUNTY, and CMAR under the DP Contract or the CMAR Contract.
- 2.1.1.6 During the Construction Phase, special on-site meetings will be held as requested by COUNTY, DP, or CMAR.
- 2.1.1.7 During the Construction Phase, the CMAR will take minutes at each meeting and distribute draft minutes within three (3) business days after each meeting. The DP and COUNTY will promptly review the minutes of each meeting and deliver any comments to the CMAR. The CMAR will promptly issue final minutes of each meeting, which will be approved by CMAR, DP, and COUNTY.
- 2.1.1.8 CMAR and DP, when requested by COUNTY, will attend, make presentations and participate as may be appropriate in public agency or community meetings related to the Project. DP will provide drawings and illustrations and CMAR will provide schedule diagrams, budget charts and

other materials describing the Project when their use is required or appropriate in any such meetings.

- 2.1.2 During both the Pre-Construction and Construction Phases the CMAR will provide COUNTY and DP, on a monthly basis, a written status report detailing the progress of the Work during that month, including whether the Work is proceeding according to Schedule, an updated and current Critical Path Method (CPM) Schedule, an updated and current Work cash flow projection for the duration of the Project, copies of the construction Superintendent's daily site reports, identification of any discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution, whether health and safety issues have arisen in connection with performance of the Work, and whether other matters exist that require resolution so as not to jeopardize CMAR's ability to complete the Work for the GMP(s) on schedule and within the Contract Time(s). The CMAR's monthly report will also include a cost tracking report with the updated Cost Model, projected final cost, subcontract amounts and buy-out status and status of contingency and allowance usage.
- 2.1.3 Within thirty (30) days after executing the Contract, CMAR will prepare and submit to COUNTY:
  - 2.1.3.1 A Critical Path Method Master Schedule (CPM Schedule) for the Work including the activities in the Design Phase and the Construction Phase through bid and award. The CPM Schedule must include three (3) weeks of COUNTY review time for Design Submission Documents at each milestone and adequate time for Government Agency and for other regulatory-type reviews and for all other necessary approvals. The CPM Schedule will indicate the dates for the start and completion of the various stages of Work, including the dates when COUNTY information and approvals are required and all necessary shutdowns or suspensions of COUNTY or separate vendor activities on the site (if any). The CPM Schedule must allow for such multiple bid packages and fast-tracked construction as may be required and include any contemplated completion date(s) earlier than those required by the Contract Documents.
  - 2.1.3.2 A Cost Model for construction of the project. The Cost Model must contain all of the costs that will be included in the GMP, including cost of the Work, general conditions, bonds, insurance, permits, taxes, including, without limitation, applicable sales taxes and transaction privilege tax, CMAR's construction fee, contingency, and any other costs in the GMP. As part of the Cost Model, the CMAR will also identify all areas of concern or risk and assign a separate and reasonable contingency to each of them. The COUNTY and DP will review these submissions and may request changes. Final contingency amounts will be as agreed by the Project Team. The statement of areas of concern/risks will be stratified by cost to enable the Project Team to focus in pre-construction on resolving or eliminating the most costly uncertainties. CMAR will update the Cost Model not less than monthly as design progresses and uncertainties are resolved.
- 2.1.4 COUNTY, DP, and CMAR will have an initial meeting promptly after selection of the DP and the CMAR to discuss issues affecting Project administration and to implement procedures to permit COUNTY, DP, and CMAR to perform their respective obligations under the CMAR Contract and the DP Contract. Among other matters to be covered at this meeting will be procedures for efficient interaction during the Design Phase so that each can perform its activities, functions, and obligations in an efficient, cooperative, coordinated, collaborative, and communicative manner. Among other subjects to be covered by the procedures will be:
  - 2.1.4.1 Arrangements for collaboration between the DP and CMAR in 1) preparing Design Submission Documents, the DP's Construction Cost Estimates, and the CMAR's Construction Costs Estimates, as required during the development of Preliminary Design, Final Design, and Construction Documents; and 2) submitting each set of Design Submission Documents and the related DP and CMAR Construction Cost Estimates to COUNTY for review and comment by COUNTY and for group discussion among the DP, CMAR, and COUNTY.

- 2.1.4.2 Arrangements that encourage frequent informal interaction, cooperation, coordination, collaboration, and communication among DP, COUNTY, and CMAR during the Design Phase, especially between submissions of Design Submission Documents and Construction Cost Estimates. These will include among other activities, the CMAR offering value engineering and constructability recommendations on the design of the Project and the DP using that information in its design work on the Project.
- 2.1.4.3 A schedule for the activities of the CMAR, COUNTY, and DP during the Design Phase.
- 1.1.4.4 Formal partnering for the Design Phase, at the option of COUNTY. Partnering is a mutual effort by all the parties involved in the Project to cooperate and coordinate efforts in order to achieve the final result. Partnering requires that all parties use their particular expertise for the mutual benefit of all, rather than for the benefit of the one. Partnering requires flexibility, the ability to appreciate the positions of the other parties and to make compromises for the benefit of all. Partnering will be implemented through a formal partnering process developed as described above and presented in a separate workshop attended by CMAR, COUNTY, DP, and their key participants. Follow up sessions will occur every three (3) months or as mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this partnering effort during Design Phase will be shared equally by COUNTY, the CMAR, and the DP.
- 2.1.4.5 A responsibility matrix developed with the cooperation and collaboration of COUNTY, CMAR, and DP.
- 2.1.4.6 No action, or attempted action, of cooperation, coordination, collaboration, or communication, and no failure to cooperate, coordinate, collaborate, or communicate, on any matter will affect or impair the respective rights and obligations of COUNTY, DP, and CMAR under the DP or CMAR Contracts. No failure by any one party to perform its obligations under this Section excuses any failure by another party to perform any obligation under other provisions of the Contract Documents, unless the obligation that the first party failed to perform is an essential predicate to performance by the second party. In such case, it is the second party's duty to make all reasonable efforts to perform its obligations.
- 2.1.5 The CMAR will interact and cooperate fully with COUNTY and DP during the design and construction phases so as to keep the Work within COUNTY's budget and schedule limitations.
- 2.1.6 The CMAR covenants with COUNTY to furnish its best skill and judgment and to cooperate with the DP in furthering the interests of COUNTY. CMAR agrees to furnish efficient business administration and superintendence and to use its best efforts to timely complete the Work in an expeditious and economical manner consistent with the interests of COUNTY.
- 2.1.7 The CMAR, COUNTY, and DP, collectively the "Project Team", will cooperatively work together during all phases of the Work to achieve completion. The CMAR will provide leadership to the Project Team during the Pre-Construction Phase for all cost, schedule, or alternative systems issues, and all matters relating to construction. During the pre-construction phase the CMAR will provide to COUNTY and the DP a written evaluation of COUNTY's Project Program and Project Budget and Schedule, each in relationship to the other with recommendations on the appropriateness of each.
- 2.1.8 The Contract Documents do not create any contractual relationship between the DP and the CMAR or any separate contractors, consultants, subcontractors of any sub-tier, or suppliers on the Project, nor does anything contained in the Contract Documents give any third party any claim or right of action against COUNTY, the DP, or CMAR which does not otherwise explicitly exist in the Contract Documents.
- 2.1.9 The CMAR's initial Work consists of its services in connection with the Pre-Construction Phase. The CMAR's Services in that phase will be parallel to and coincidental with the DP's Services. CMAR will prepare an itemized systems type cost estimate at the completion of the Schematic/Conceptual Design Phase, and at other times as agreed upon by the Project Team, in a format consistent with that used by

DP or in a format otherwise mutually agreed upon prior to the cost estimate preparation. CMAR will prepare Construction Specifications Institute (CSI) Master Formatted cost estimates at each submittal phase after the completion of Schematic/Conceptual Design, to verify that the Project is staying within the applicable portions of COUNTY's identified budget. CMAR will keep all Deliverables required of it up to date during the Pre-Construction Phase so that the Project activities will continue uninterrupted while progressing into the Construction Phase.

- 2.1.10 The CMAR will provide a GMP during the Pre-Construction Phase as called out in **Article 3(A) of the Contract**.
- 2.1.11 Subject to the other provisions of these General Conditions, execution of the Contract by the CMAR is a representation that the CMAR has visited the Site, has become familiar with the locale and any specific conditions under which the Work is to be performed, and has correlated CMAR's personal observations with the requirements of COUNTY's Project criteria.
- 2.1.12 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one is binding as if required by all. Work not covered in the Contract Documents but that the DP considers necessary for the proper completion of the Work will be required of CMAR unless it is inconsistent with the Contract Documents, or is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with their recognized meanings.
- 2.1.13 The organization of the Specifications into division, section, and article, and the arrangement of Drawings does not obligate or control the CMAR in dividing performance of the Work among subcontractors, or in establishing the extent of the Work to be performed by any one trade.
- 2.1.14 With respect to all Work performed by CMAR and its Subcontractors and Consultants, CMAR and its Subcontractors and Consultants will keep full and detailed accounts and exercise such cost controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and subject to review by COUNTY. During performance of the Work and for five (5) years after Final Payment, the CMAR will retain and will also require all Subcontractors and Consultants to retain for review or audit, or both, by COUNTY all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs, and all other matters related to the Work. Upon request by COUNTY, CMAR will produce a legible copy or the original of any or all such records as are described above at any time during or after the Work as COUNTY may request. Upon request, the CMAR will submit to COUNTY copies of all payrolls, reports, estimates, records, Change Order costs and data, and any other data concerning Work performed or to be performed, materials supplied or to be supplied, including Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant's progress payment checks. The requirements of this Section will be provided for in all contracts between the CMAR and its Subcontractors and Consultants. COUNTY may exercise its rights under this Paragraph as often as reasonably necessary in COUNTY's sole judgment to assure COUNTY has a complete and accurate understanding of all Project costs.

## **2.2 PRE-CONSTRUCTION SERVICES**

The CMAR's primary responsibility during pre-construction is to apply its knowledge and experience to keeping the design capable of being constructed within the budget and schedule. CMAR must track costs on an ongoing basis and proactively advise DP and COUNTY of lower cost or more effective means, methods, materials, design aspects, etc., or anytime when construction costs exceed, or threaten to exceed the budget, so the Project Team can take appropriate action.

- 2.2.1 The CMAR will independently develop a Construction Cost Model for the Project for COUNTY's review and approval. COUNTY will advise the DP and CMAR in writing of the amount of COUNTY's Construction Budget. DP and CMAR will evaluate COUNTY's Construction Budget for cost realism and prepare

construction cost estimates for the completion of the Work. DP and CMAR's cost estimates must include all of the costs that will be included in the GMP, including labor, materials, general conditions, bonds, taxes, CMAR construction fee, CMAR's contingency, and all other GMP costs. DP, CMAR, and COUNTY will reconcile the differences between COUNTY's Construction Budget and the DP and CMAR estimates, if any, to develop an agreed estimate for the cost of construction. If the agreed estimate exceeds COUNTY's Construction Budget, COUNTY, at its sole discretion, may 1) seek additional funding; 2) direct redesign or re-scoping of the Project to bring it within the available funding; or 3) any combination of 1) and 2); or 4) determine not to go forward with this Contract for all or part of the Project. Any adjustment to COUNTY's budget or scope must be in writing and approved by COUNTY.

2.2.2 Unless otherwise agreed by COUNTY and the DP, COUNTY may retain or authorize DP or CMAR to retain surveyors, engineers, or other consultants in connection with the following items, provided such information is specifically requested by the DP or COUNTY:

- a. A survey of existing site conditions. A complete and accurate survey of the Project site and existing improvements including, but not limited to, grades and lines of streets, pavements, and adjoining properties, contours of the site, and full information as to sewer, water, gas, electrical service, telephone lines, or other utilities.
- b. A report on subsurface investigations. Professional recommendations regarding local conditions accompanied by test borings, or test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion, and resistivity tests including necessary operations for determining subsoil, air and water conditions, and chemical, mechanical, laboratory, or other tests.
- c. CMAR may recommend such additional geotechnical or investigative tests, such as potholing, as CMAR believes may be necessary to support construction on the site.
- d. As-built information in possession of COUNTY concerning any existing improvements that will remain on the Site and that will be incorporated into the Project, to which the Project will be attached, or with which the Project will be interconnected.
- e. Other tests recommended by DP or CMAR and agreed to by COUNTY.

In addition to the above information, the DP is responsible for obtaining information concerning conditions of the Site required by law or typically obtained within the DP's industry to assess conditions for similar projects and will advise COUNTY of any such information so obtained that may be significant to the Project.

COUNTY will deliver to DP a copy of all available surveys, reports, test results, and other information described in this Section 2.2.2. Such items, any other information concerning the Site delivered by COUNTY to DP, and all information DP is obligated to obtain on its own initiative are referred to as the "DP Site Information".

The DP and CMAR will thoroughly acquaint themselves with all DP Site Information.

By making each submission of any Design Submission Documents (including, without limitation, the Construction Documents) the DP represents and warrants to COUNTY that DP has examined and evaluated the DP Site Information and has taken the DP Site Information into account in preparing the Design Submission Documents.

The DP and CMAR have the right to rely upon surveys, soil test reports, other test reports and other information provided by COUNTY, but only to the extent provided in said reports or information. The DP will carefully examine all surveys, soil test reports, other test reports and other information, whether obtained by the DP or COUNTY, and will promptly report to COUNTY any obvious or reasonably suspected errors, omissions, or inadequacies in such surveys, soil test reports, other test reports, and other information of which the DP becomes aware as a result of such examination or otherwise, and of any disagreement the DP may have with the conclusions of such surveys, soil test reports, other test reports, and other information. The DP and the DP's Consultants will make themselves available to the soils engineer and any other person retained by COUNTY to prepare any surveys, soils test reports, other test reports, or other information, for the purpose of reconciling such concerns.



2.2.3 The DP will submit to COUNTY and CMAR all required Design Submission Documents to describe the Project's essential elements. The Design Submission Documents required of the DP will include such drawings, specifications, and other documents as may be necessary to fully identify the Project scope and materials, together with the DP's Construction Cost Estimates. The CMAR will submit to COUNTY detailed Construction Cost Estimates as part of each design submission. At the time of each scheduled submission, CMAR, DP, and COUNTY will meet and confer about the submission. During the meeting, the CMAR and DP will identify, among other things, the evolution of the design and any significant changes or deviations from previously submitted Design Submission Documents and any changes in the CMAR's Construction Cost Estimate or the DP's Construction Cost Estimate. Within three (3) weeks following each design review meeting, COUNTY will approve or reject the Design Submission Documents, CMAR's Construction Cost Estimate, and the DP's Construction Cost Estimate. COUNTY may reject in full or in part any Design Submission Documents or Construction Cost Estimates which do not conform to COUNTY's Project Criteria or overall Project concepts, which exceed the Construction Budget, or are not within the Guaranteed Maximum Price, or not consistent with the GMP Setting Drawings, Specifications, Assumptions, and Clarifications (unless the inconsistency was approved or requested by COUNTY), or for any other reasonable cause consistent with the intent of the DP Contract Documents or the CMAR Contract Documents, as applicable. In the event of such rejection, the DP or CMAR respectively will bear the costs of redesign or of revising the construction costs estimates, unless the deficiencies upon which rejection is based are attributable to COUNTY-requested changes. All deviations from COUNTY's Project Criteria, the Construction Budget, the Guaranteed Maximum Price, or the GMP Setting Drawings, Specifications, Assumptions, and Clarifications must be approved in writing by COUNTY.

2.2.4 The CMAR will prepare a Project Management Plan (PMP), which will include:

- a. Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project,
- b. Required and recommended investigations to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities,
- c. Alternate strategies for fast-tracking and/or phasing the construction,
- d. Construction management plan,
- e. Permitting strategy,
- f. Safety and training programs,
- g. Construction quality control,
- h. A commissioning program, if required for the Project,
- i. Cost estimate and basis of the model,
- j. A site security plan,
- k. Defined scope basis,
- l. Work breakdown structure if required,
- m. Organization chart,
- n. QA/QC Plan,
- o. Communication plan,
- p. Risk Management plan, and
- q. Procurement plan.

Until such time as the CMAR has been selected and receives Notice to Proceed, the DP will develop and maintain the Project Schedule on behalf of, and to be used by, the Project Team, based on input from the existing Project Team members. When the CMAR is brought into the Project Team, the CMAR will assume ownership and responsibility for the Project Schedule that will be incorporated into the PMP.

The fundamental purpose of the PMP is to identify, coordinate, and record the tasks and activities to be performed by all of the Project Team members. The Project Team will utilize the PMP as a basis for managing and monitoring all members' compliance with the requirements of the Project. Project Team members are responsible for their compliance with the PMP requirements. A member's failure to complete a task does not excuse a subsequent failure by another member unless the first member's task is a direct prerequisite to the latter's performance provide, however, the latter team member must make

reasonable efforts to mitigate impacts of the failure. Resolution of compatibility issues between the different tracking programs that may be used is the responsibility of the CMAR (i.e. The CMAR may choose to re-enter all tracking data provided by the DP in its tracking program). The Project Schedule will be a CPM diagram schedule that shows the sequence of activities, the interdependency of each activity, will indicate the Critical Path including the Design and Construction phases, and will satisfy the requirements in **Section 2.2.5**.

- 2.2.5 The schedule for performance of the Construction Work will be a CPM schedule with reasonable detail, including a time-scaled network and computer printout in accordance with the following requirements:

The DP and CMAR will use scheduling software acceptable to COUNTY to develop the Project Schedule. The Project Schedule will be presented in graphical and/or tabular reports as agreed upon by the Project Team. If Project phasing, as described below, is required, the Project Schedule will indicate milestone dates for the phases, once determined.

The Project Schedule will provide three (3) weeks for COUNTY to review Design Submission Documents at each sub-phase of the Design Phase and provide adequate time for Government Agency reviews and all other necessary approvals and permits. The schedule will indicate the dates for the start and completion of the various stages of the Project, including, among others, the dates when COUNTY information and approvals are required and all necessary shutdowns or suspensions of COUNTY or separate vendor activities on the Site (if any). CMAR will update and reissue the Project Schedule throughout the Design Phase and the Construction Phase, as necessary and appropriate to reflect adjustments in the schedule. Updates will be subject to approval by COUNTY.

The Project Schedule will be in Days (calendar days, unless otherwise directed by COUNTY) and indicate task duration (earliest start/latest completion) for all activities. Float times for all activities will be shown. The CPM diagram will be presented in a time scaled graphical format for the Project as a whole.

The Project Schedule must indicate all relationships between activities.

The activities making up the Project Schedule will be of sufficient detail to assure that adequate planning has been done for proper execution of the Work so that it provides an appropriate basis for monitoring and evaluating progress of the Work.

The activities upon which the Project Schedule is based will coincide with the Schedule of Values.

The Project Schedule will show all submittals associated with each Work activity and the review time for each submittal.

The Project Schedule will show milestones, including milestones for all Project Team members.

The Project Schedule will include anticipated rain delay during the performance of the construction contract. The duration will reflect the average climatic range and conditions prevailing in the locality of the site. Weather data, provided by the CMAR, will be based on information from the National Weather Services or other COUNTY-approved source.

The Project Schedule will consider the Substantial Completion date requirements showing portions of the Project having priority.

Float time will be prescribed as follows: The total Float within the overall schedule is not for the exclusive use of either COUNTY or CMAR, but is jointly owned by both and is a resource available to, and shared by, both parties as needed to meet contract milestones and the Project completion date.

CMAR will not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc.

Since Float time within the schedule is jointly owned, no time extensions will be granted, nor delay damages paid, until a delay occurs which extends the Work beyond the Substantial Completion date.

Since Float time within the schedule is jointly owned, COUNTY-caused delays on the Project may be offset by COUNTY-caused time savings (*i.e.*, critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CMAR, etc.). In such an event, the CMAR is not entitled to receive a time extension or delay damages until all COUNTY-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Throughout the Design Phase, CMAR will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than monthly. The CMAR will add detail to previous version of the Project Schedule to keep it current throughout the Design Phase, so that the Project Schedule is ready for implementation at the start of the construction phase. The update/revisions will include:

- a. A narrative analyzing the progress achieved to-date vs. planned
- b. Any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions
- c. Revisions in Drawings and Specifications
- d. The results of any additional investigative reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities, and documents depicting underground utilities placement and physical condition, whether obtained by COUNTY, DP or the CMAR
- e. Unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way
- f. The fast-tracking of any of the construction, or other chosen construction delivery methods
- g. The requisite number of separate bidding documents to be advertised
- h. The status of the procurement of long-lead time equipment and materials
- i. Funding issues (*i.e.*, delays) identified by COUNTY

If phased construction is deemed appropriate and both COUNTY and DP approve, CMAR will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of shortening the Construction Time and/or reducing the Cost of the Work. The CMAR will take into consideration such factors as natural and practical lines of Work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, effect on traffic or public access, and any other factors pertinent to saving time and cost. The Project Schedule will be adjusted to allow for phased construction or for portions of the Construction Work to be accepted separately by the COUNTY, if required by COUNTY.

## **2.3 CMAR – DP DESIGN COOPERATION**

- 2.3.1 CMAR will continuously and actively track Project costs throughout the design phase, will proactively advise DP and COUNTY, and will make recommendations relating to construction costs and concerns regarding the feasibility and practicality of any proposed means and methods, selected materials, equipment, building systems, and labor and material availability, and long-lead items. CMAR will further advise COUNTY and DP regarding proposed site improvements, excavation, utility coordination, traffic control and public access, or other issues, as well as any concerns regarding the coordination of drawings and specifications. CMAR will advise COUNTY and DP any time that a design revision results in the CMAR's estimate of the Cost of Construction exceeding the COUNTY's construction budget.

### **2.3.2 Conceptual/Schematic Design**

- a. The DP will review COUNTY's Project Criteria to ascertain the basic requirements for the Project. COUNTY will provide such planning and other documents to DP as are available.

- b. The DP will prepare an expanded Project description for review by COUNTY and CMAR and for COUNTY's approval, which expands and refines the Project Criteria. The description will include all site conditions affecting the Project, including utilities, drainage and flood control implications, and other requirements specified by COUNTY.
- c. The CMAR will work in a collaborative, cooperative, coordinated and communicative manner with the DP in developing items defined in Item (b) above. If agreement by the DP and the CMAR is not attainable with respect to any item, DP and CMAR will promptly refer the matter to COUNTY who will make the final determination on the matter.
- d. The CMAR will develop and submit to COUNTY and DP a conceptual Construction Cost Estimate.
- e. Depending upon the stage of the Project at the inception of this Contract, COUNTY, in its sole discretion, may decide to forgo performance of the activities under this Paragraph 2.3.2 in whole or in part without liability to CMAR or DP.

### **2.3.3 Preliminary Design**

- a. The DP will review the Project description with COUNTY and the CMAR, solicit and receive comments and recommendations from the CMAR and COUNTY, confirm COUNTY's and CMAR's understanding of the subject matter, determine any additional, modified or alternative requirements, and obtain COUNTY's approval.
- b. The DP will provide COUNTY with a preliminary evaluation of the requirements of the Project in light of the amount of the Construction Budget.
- c. The DP will review with COUNTY and CMAR alternate methods and approaches to design and construction of the Project, recommend an approach, and jointly decide with COUNTY and CMAR on the method best suited to COUNTY's requirements and the Project.
- d. Based upon the Project description, discussions with COUNTY and CMAR, the Construction Budget, and the DP Site Information, the DP will prepare Preliminary Design Documents (SDs), which will consist of drawings and other documents depicting the scale and relationship of Project components, for review with COUNTY and CMAR and for COUNTY's approval.
- e. The DP will work in a collaborative, cooperative, communicative, and coordinated manner with the CMAR in developing items defined in Item (d) above. If agreement by DP and CMAR is not attainable, DP and CMAR will promptly refer the matter to COUNTY who will make the final determination on the matter.
- f. The CMAR will develop and submit to COUNTY and DP a Construction Cost Estimate.
- g. The DP and CMAR will reconcile each of the DP's Construction Cost Estimate and CMAR's Construction Cost Estimate with the other, and will reconcile both of them with COUNTY's Construction Budget. DP and CMAR will complete the reconciliation not later than seven (7) days after completion of both estimates. This reconciliation must provide an estimate no greater than COUNTY's Construction Budget before the Final Design sub-phase under **Section 2.3.4** may begin.

### **2.3.4 Final Design**

Based on the SDs and any amendments thereto approved by COUNTY to the Project or the amount of COUNTY's Construction Budget, the DP will prepare Design Development Documents (DDs) for review with COUNTY and the CMAR and for COUNTY's approval. The DDs will consist of drawings and other documents to delineate and define the general design of the entire Project.

The DP will work in a collaborative, cooperative, communicative and coordinated manner with the CMAR in developing the DDs defined above. If agreement between DP and CMAR is not attainable,

DP and CMAR will promptly refer the matter to COUNTY who will make the final determination on the matter.

The CMAR will develop and submit to COUNTY and DP a Construction Cost Estimate.

The DP and CMAR will reconcile the DP's Construction Cost Estimate and the CMAR's Construction Cost Estimate with each other and will reconcile both of them with the amount within COUNTY's Construction Budget. DP and CMAR will complete the reconciliation not later than seven (7) days after completion of both estimates. This reconciliation will provide an estimate no greater than the amount within COUNTY's Construction Budget before the Construction Documents sub-phase under **Section 2.3.5** may begin.

### **2.3.5 Construction Documents**

Based upon the approved Final Design Documents (DDs) and any further amendments thereto of any kind approved by COUNTY, the DP will prepare detailed Construction Documents (CDs) setting forth the requirements for construction of the entire Project, including complete Drawings, Specifications, and a revised Construction Cost Estimate. The DP must be aware of, and conform to, the **order of precedence provisions in Section 2.6.12.3**. The Construction Documents are subject to review by COUNTY and CMAR and to approval by COUNTY.

If the GMP has been agreed by COUNTY and CMAR before completion of the Construction Documents, the Construction Documents will be subject to review by CMAR for conformance with the GMP Drawings, Specifications, Assumptions, and Clarifications as provided in **Section 3.2.5**.

All drawings and specifications included in the Construction Documents must bear the dated signature and seal of the DP. Except as expressly provided in the DP Contract Documents, the DP is fully responsible for all designs it provides for the Project.

Unless otherwise specified, DP will file all documents and obtain all approvals required for design approval by Governmental Agencies having jurisdiction over the Project and/or designated by COUNTY. COUNTY will cooperate with the DP in preparing applications for necessary approvals, sign applications, and pay applicable fees. The DP will also assure that the Project meets all applicable statutory requirements for public works of the nature of the Project.

### **2.3.6 DP's Construction Cost Estimates and CMAR's Construction Cost Estimates**

The DP will cooperate and exchange information with CMAR in CMAR's development of its Construction Cost Estimates and the Guaranteed Maximum Price. The CMAR will cooperate and exchange information with the DP in the development of DP's Construction Cost Estimates.

Each DP Construction Cost Estimate, CMAR Construction Cost Estimate and CMAR Schedule of Values will include without duplication:

- a. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Construction Work. All fixed equipment, site improvements, utility and utility relocations, and equipment installations will also be included.
- b. General Conditions;
- c. The Construction Phase Fee;
- d. All bond and insurance premiums;
- e. All applicable taxes, including, without limitation, applicable sales taxes and transaction privilege tax; and
- f. A CMAR Contingency.

The DP and CMAR Construction Cost Estimates will include the costs of the Construction Work and will not include the CMAR's Design Phase Services Fee, sums due the DP, costs of land, rights of way, financing, or other costs which are the responsibility of COUNTY.

The DP and the CMAR will base each of their Construction Cost Estimates on the latest Design Submissions Documents. The DP and CMAR will discuss the materials, equipment, component systems, and types of construction contemplated by the DP to the extent such items are not in the latest Design Submission Documents.

The CMAR will make any recommendations the CMAR determines necessary or appropriate for modifications in the latest Design Submission Documents or in the materials or items the DP proposes to use.

All DP and CMAR Construction Cost Estimates will use a consistent method of allocating costs of the Construction Work, will follow the standard construction format, and will otherwise be in a form agreed to by DP, CMAR, and COUNTY.

After COUNTY and CMAR agree on a Guaranteed Maximum Price and in any event during the Construction Documents sub-phase of the Design Phase, CMAR will continually monitor costs and develop cost estimates to help ensure that the cost of the Construction Work remains within both the COUNTY's Construction Budget and the Guaranteed Maximum Price.

DP Construction Cost Estimates and CMAR Construction Cost Estimates will be independently prepared, will be based on quantitative takeoffs whenever possible, and will be in sufficient depth and organization to be used in preparing budgets based on the Schedule of Values.

CMAR will submit its Construction Cost Estimates to the DP for review prior to submission of the estimates to COUNTY. DP will submit its Construction Cost Estimates to CMAR for review before submission of the estimates to COUNTY. DP and CMAR will meet and reconcile their respective cost estimates not later than seven (7) days after exchanging Construction Cost Estimates and the respective Design Submission Documents and submit the reconciled Cost Estimates and Design Submission Documents to the COUNTY. If DP and CMAR cannot agree on any individual cost items, then the highest identified cost will be utilized and noted as such by the CMAR and the DP in their respective estimates submitted to the COUNTY.

In the event the reconciled Cost Estimates are not within the COUNTY's Construction Budget or GMP, the DP and CMAR will:

- a. Notify COUNTY if it appears that the DP's Construction Cost Estimate or the CMAR's Construction Cost Estimate will exceed COUNTY's Construction Budget or the GMP.
- b. Satisfactorily demonstrate the accuracy of its estimate in such detail as COUNTY may reasonably require.
- c. Make reasonable recommendations for corrective action to bring the estimates back within COUNTY's Construction Budget or the GMP, if the estimates exceed COUNTY's Construction Budget.

The overall design objective is to develop a design that can be constructed for an amount within COUNTY's Construction Budget. If, in connection with any submission of Design Submission Documents and Cost Estimates, the Cost Estimates exceed COUNTY's Construction Budget, then the costs of redesign and of revising the cost estimates will be allocated as follows:

- a. If the excess costs of the Design Submission Documents are attributable to COUNTY-directed design choices, unanticipated significant materials cost increases or other unforeseen market dislocations, or other causes beyond the control of DP and/or CMAR, then the costs of revision will be the responsibility of COUNTY.

- b. If the excess costs are attributable to unapproved deviations from COUNTY's Final Schematic Design Report or unreasonable or negligent design choices, then the costs of revision will be the responsibility of DP.
- c. If the excess costs are attributable to the application of unsubstantiated deviations from the cost model by CMAR, then the costs of revising the costs estimates will be the responsibility of CMAR.
- d. If the excess costs are attributable to any combination of the causes identified above, then the costs of design and or cost estimate revision will be allocated to each party in the percentage by which their cause contributed to the excess.
- e. In the event the excess costs are attributable to an unanticipated cause not identified above, then the costs of revision will be the responsibility of COUNTY, unless the unanticipated cause arises from the error, omission, or negligence of the DP or CMAR, in which case the offending Party will bear the costs.
- f. If the Parties are unable to agree on causation or the allocation of costs, then COUNTY will make a determination with respect thereto and provide a copy of the determination in writing to each of the other parties. COUNTY's determination will be final and conclusive unless, within seven (7) calendar days from delivery of the COUNTY's determination, the party or parties objecting to COUNTY's determination notifies each of the other parties in writing that they are initiating the Dispute Resolution procedure of the Contract. The notice will include a brief statement of the basis for the initiating party's objection to COUNTY's determination.

### **2.3.7 BUDGETING AND GUARANTEED MAXIMUM PRICE**

- 2.3.7.1 The CMAR will provide its Pre-Construction Services for the Pre-construction Phase Fee identified in the Contract. That fee will be earned based upon the amount of Design Phase Work completed. That fee will be billed and payable monthly as a percentage of completion of Pre-Construction Services. The Construction Phase services of CMAR will be provided based upon an Open Book Cost of the Work, plus the separate Construction Phase Fee for CMAR identified in the Contract.
- 2.3.7.2 As provided for in **the Contract** and when the design has sufficiently progressed, COUNTY will require CMAR to propose a GMP for the construction that is to be based on the Cost of the Work. The GMP will be prepared in accordance with these Sections 2.3.7.2 and 2.3.7.3 and **Appendix "B" Construction Costing**.
- 2.3.7.3 COUNTY will, at its sole discretion, have the option to accept the GMP submitted by CMAR, request that CMAR submit another GMP, or reject the GMP and terminate all contracts and agreements with the CMAR. In the event of such a termination, the CMAR will receive payment for services it has provided to date. In this situation, there will be no amounts paid for any termination cost, lost profits, lost opportunity or any other reason.
- 2.3.7.4 Once accepted by COUNTY, the GMP may be revised only by an approved Change Order or Contract Amendment.
- 2.3.7.5 In the event the CMAR elects, in its sole discretion, to maintain a construction contingency within the GMP, the criteria for the development of that contingency must be acceptable to the COUNTY.

Thereafter, the CMAR must inform the COUNTY of any intended usage of the contingency, with supporting itemized schedule and pricing documentation, to maintain complete records and confirm its appropriate use for the Project.

## 2.3.8 COST ESTIMATES

- 2.3.8.1 Construction Cost: All estimates of GMP, and associated Schedule(s) of Values must include without duplication:
- a. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;
  - b. The CMAR's Construction Phase Fee;
  - c. All bond and insurance premiums;
  - d. All applicable taxes, including without limitation, applicable sales taxes and transaction privilege tax;
  - e. A Contingency for bidding/construction;
  - f. Construction General Conditions;
  - g. Overhead
- 2.3.8.2 The CMAR's estimates of Construction Costs will not include sums due the DP, the CMAR's Pre-Construction Phase Fee, costs of land, rights of way, financing, or other costs that are the responsibility of COUNTY. CMAR's allowable labor rates within rates or part of Construction General Conditions are restricted to direct labor costs, *i.e.*, actual salaries/wages plus associated costs required by statute or regulation (social security, Medicare employee's match, unemployment, etc.) and employee benefits (vacations, health insurance, etc.). Non-Project specific training costs, bonuses, cost of living allowances, education, and training are not allowable labor costs and are not reimbursable. Promotional or celebratory expenses the CMAR incurs while performing and completing the Project are not reimbursable as part of Construction General Conditions and must be paid out of the CMAR Construction Phase fee.
- 2.3.8.3 The CMAR, prior to and in preparing its estimates of Construction Costs and providing the GMP, will consult with the DP to determine to the extent possible what materials, equipment, component systems, and types of construction are to be included in the Construction Documents and to make recommendations for reasonable adjustments in the Scope of Work, and to include in the Construction Documents such alternate items as COUNTY approves in writing.
- 2.3.8.4 The CMAR will take the lead in developing a cost model, preparing an estimate of Construction Cost as soon as major Project requirements have been identified, and updating the cost model and estimate for each submittal of the Design Submission Documents specified in 1.2.14 of the General Conditions. For all Bid Packages for Construction, the CMAR will prepare a quantity take-off cost estimate based on CSI formats within two weeks of receipt of applicable documents from the DP. All estimates of Construction Cost must make allowance for bidding and price escalation. During the Pre-construction Phase, the CMAR will continually monitor the cost estimates and develop a cost estimate to help assure that the Cost of the Work remains within the applicable portion of the Project Budget or GMP, as applicable. No Construction Services or Work to be performed under the Contract will commence until a GMP is established by the CMAR, submitted and accepted by COUNTY, and incorporated into this Contract by Contract Amendment.
- 2.3.8.5 All CMAR cost estimates will be prepared separately and independently from DP estimates, will be based on quantitative takeoffs whenever possible, and will be completed in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems (if any), and Bid Packages. Lump sum estimates are not acceptable.
- 2.3.8.6 CMAR will submit all applicable cost estimates to the DP and COUNTY for review, scope verification, and reconciliation with the DP's estimates of cost. If the DP and CMAR cannot agree on any individual cost items, then the highest identified cost of either will be utilized and noted as such by the CMAR in the submission of the cost estimate to COUNTY as part of the Design Submittal.



2.3.8.7 After review and scope verification of the cost estimate done by the DP, the CMAR will a) notify COUNTY if it appears that the DP estimate of Construction Costs will exceed the applicable portion of the projected Construction Cost Budget or GMP as may be applicable; b) satisfactorily demonstrate the accuracy of its estimate in such detail as COUNTY may reasonably require; and c) make reasonable recommendations for corrective action consistent with the Project Budget or GMP, as may be applicable. All such cost estimates must be within Project Budget or GMP as applicable, or include reasonable recommendations for bringing the estimates within the Project Budget or GMP, as applicable, prior to final submission to COUNTY for review and acceptance. CMAR will not bear any costs to correct Design Documents to bring the Project back within the Project Budget or GMP, as applicable, except for the CMAR's own costs incurred in re-estimating.

2.3.8.8 DP/CMAR Cooperation: The DP, by the terms of its contract with COUNTY, is obligated to provide reasonable cooperation to the CMAR in the development of estimates of Construction Cost and the GMP. Conversely, the CMAR shall provide reasonable cooperation to the DP in the development of estimates of Construction Cost and the GMP. DP and CMAR shall reconcile their Cost estimates with each other and COUNTY not later than seven (7) days after the completion of CMAR's estimate or receipt of DP's estimate to assure COUNTY that the Project Cost is within the designated budget.

### **2.3.9 OTHER PRE-CONSTRUCTION SERVICES**

2.3.9.1 The CMAR will review the Drawings and Specifications as they are being prepared, recommending alternative materials, alternatives, methods, means, constructability, and/or sequencing whenever design details affect construction feasibility, schedules, or cost. However, nothing contained in this section 2.3.9.1 requires the CMAR to provide design services.

2.3.9.2 The CMAR will make recommendations to COUNTY and the DP regarding the division of work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and similar factors.

2.3.9.3 Coordinating with the DP, the CMAR will provide a written Constructability Review of all Drawings and Specifications, in a form acceptable to COUNTY. The Constructability Review will (a) minimize areas of conflict, errors, omissions, and overlapping of the Work to be performed by the various subcontractors; (b) confirm that the full Scope of Work has been included in the drawings; (c) endeavor to minimize cost and to Value Engineer where appropriate; and (d) allow for phased and/or fast-track bid packages and construction, as required. An acceptable and effective Constructability Review is a goal for the CMAR and the COUNTY.

2.3.9.4 The CMAR will attend all regular meetings with COUNTY and DP and such additional meetings as COUNTY may request. The DP will schedule all regular meetings with the prior agreement of the CMAR and approval of COUNTY. COUNTY will schedule all additional meetings.

2.3.9.5 The CMAR will investigate and recommend materials and equipment that COUNTY could purchase directly; consider long lead time procurement and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the DP regarding the timetable for preparation of Construction Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.

2.3.9.6 If COUNTY determines that Integrated Project Delivery (IPD) or Building Information Modeling (BIM) objectives will benefit the Project and it is or will be to the advantage of COUNTY or the Project to select certain subcontracting trades to participate in the design process during the Pre-Construction Phase, as well as provide Construction Services during the Construction Phase, then the following procedures will apply:

- a. CMAR will prequalify Subcontractors from the trades needed in the Pre-Construction Phase.
- b. Upon acceptance of COUNTY, a Request for Proposal (RFP) will be requested from pre-qualified Subcontractors. The RFP will request additional qualification information in addition to pricing information, such as labor rates and overhead and profit factors.
- c. The Statement of Qualifications (SOQ) from the Subcontractors will be reviewed by a committee consisting of CMAR, COUNTY, and design team members. The qualification and pricing information will be scored by a pre-determined weighted scoring system.
- d. The committee will develop a list of firms that will be interviewed.
- e. The Subcontractors will be interviewed and ranked, and the highest ranked Subcontractor will be selected to provide the services.
- f. All Subcontractor selections will be in accordance with A.R.S. 34-603(C)(2)(e)(i) and CMAR's subcontractor selection plan.

For Subcontractors selected in this manner, the CMAR must establish to COUNTY's satisfaction that the Subcontractor's price submission is reasonable and appropriate by following the procedures outlined for the CMAR in Article 2.3.9.11 and 2.3.9.12.

- 2.3.9.7 The CMAR will: assist COUNTY and DP in the preparation of the necessary and appropriate bidding information, bidding forms, and pre-qualification criteria for bidders; develop subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. The CMAR will review all potential subcontractors with COUNTY and DP and obtain COUNTY's approval of the pre-qualification of any subcontractor. If the CMAR becomes aware prior to any bid date that fewer than three (3) pre-qualified subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified subcontractors are likely to exceed the current Schedule of Values or estimate of Construction Cost, the CMAR will promptly notify COUNTY.
- 2.3.9.8 The CMAR's post-bid selection of any subcontractor must be based on qualifications alone, or on a combination of qualifications and price selection, but will not be based on price alone. The CMAR will receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify COUNTY and DP concerning which bids from pre-qualified subcontractors will be accepted and awarded. The CMAR will notify COUNTY and DP of the time and place of all bid openings and will permit COUNTY and DP to attend such openings with their representatives and guests. CMAR will justify in writing any proposal to accept other than a low lump sum bid with sufficient detail to satisfy COUNTY, and the proposal will be subject to prior written approval by COUNTY, with no increase in the GMP. Once approved by COUNTY, CMAR may not replace any subcontractor without COUNTY's prior approval and any change in cost to CMAR will not be a responsibility of COUNTY and there will be no increase in GMP or contract price by reason of such change of subcontractor. Within ten (10) days after award, CMAR will furnish one (1) fully executed subcontract for work or services on this Project to COUNTY together with all special or supplementary conditions applicable to the subcontract work.
- 2.3.9.9 The CMAR will provide COUNTY and DP with requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary Project facilities and for equipment, materials and services for common use of subcontractors and verify that all such information is included in the Construction Documents.
- 2.3.9.10.1 If the project covered by this Contract is not "horizontal construction" as defined in A.R.S. § 34-101 and the CMAR indicates it desires to self-perform any portion of the Construction Work, the following procedures will be followed: The CMAR must submit its qualifications to do the listed portion(s) of the

Construction Work to COUNTY and if COUNTY is satisfied with CMAR's qualifications as to that portion of the Construction Work, COUNTY will designate the CMAR as a pre-qualified Subcontractor for that portion of the Construction Work. A bid package for each portion of the Construction Work as to which CMAR is a pre-qualified Subcontractor will be prepared in the same manner and content as bid packages for Subcontractors in other trades. CMAR will submit a proposed price for each of these portions of the Construction Work. This proposed price will include labor rates, and certify that sub-sub trades and materials will be bid with a minimum of three pre-qualified bidders.

- 2.3.9.10.2 If the project covered by the Contract is "horizontal construction" as defined in A.R.S. § 34-101, CMAR's submitted GMP will clearly identify the Work the CMAR intends to self-perform and distinguish the costs thereof.
- 2.3.9.11 In order to evaluate the CMAR's Price Submission on self-performed Work, COUNTY may do any or all of the following at COUNTY's discretion: (i) engage an estimator selected by COUNTY to prepare an independent estimate of this portion of the Construction Work; (ii) engage the DP, or other consultants to do a construction market study to confirm construction market impacts to the cost of this portion of the Construction Work; or (iii) take other action to evaluate the CMAR's Price Submission. In any event, CMAR is responsible to establish to COUNTY's satisfaction that the CMAR's Price Submission is reasonable and appropriate. If COUNTY is satisfied that the CMAR Price Submission is reasonable and appropriate, COUNTY will advise the CMAR that the CMAR is selected as Subcontractor for the respective portion of the Construction Work.
- 2.3.9.12.1 If the project covered by this Contract is not "horizontal construction" as defined in A.R.S. § 34-101 and at the conclusion of the review of the CMAR's proposed price, COUNTY is not satisfied that the CMAR's Price Submission is reasonable and appropriate, COUNTY will so advise the CMAR and the CMAR will conduct a normal Subcontractor bid competition for selection of the Subcontractor to perform this portion of the Construction Work, in accordance with the procedures in Section 2.3.9.7, except that, notwithstanding any other provision of the CMAR Design Phase Services Contract Documents to the contrary, (i) the CMAR's Price Submission will be the CMAR's bid for that portion of the Construction Work in the Subcontractor bidding process; (ii) the CMAR must obtain bids for that portion of the Construction Work from a minimum of two other pre-qualified Subcontractors; (iii) the Subcontractor bids for that portion of the Construction Work must be delivered to COUNTY rather than the CMAR; and (iv) COUNTY will decide which Subcontractor bid to accept, in accordance with Article 2.3.9.8.
- 2.3.9.12.2 If the project covered by this Contract is "horizontal construction" as defined in A.R.S. § 34-101 and at the conclusion of the review of CMAR's proposed price, COUNTY is not satisfied that CMAR's Price Submission is reasonable and appropriate, COUNTY may, at its sole discretion: 1) negotiate with CMAR to arrive at a more acceptable price; 2) negotiate with CMAR and request a best and final offer; 3) seek additional funding, if available; 4) terminate the Contract for convenience and acquire construction services by different means; or 5) any combination of these or such other actions as COUNTY deems appropriate within its sole discretion.

## **2.4 LEGAL REQUIREMENTS.**

CMAR will perform all Work in accordance with all applicable Legal Requirements as described in 1.2.20 and otherwise will provide all notices applicable to the Work. It is the responsibility of the CMAR during the Pre-Construction Phase to assist the DP and the COUNTY to ascertain that the Construction Documents under preparation are in compliance with all applicable laws, statutes, ordinances, building codes, rules, and regulations.

## **2.5 GOVERNMENT APPROVALS AND PERMITS**

Unless otherwise provided in the Contract Documents, CMAR has the responsibility to obtain and pay for all necessary permits, approvals, licenses, government charges, and inspection fees required for the prosecution of the Work by any Governmental Agency having jurisdiction over the Project.

## **2.6 CMAR'S CONSTRUCTION PHASE SERVICES**

- 2.6.1 Unless otherwise provided in the Contract Documents to be the responsibility of COUNTY or a separate Contractor(s), CMAR's construction phase services will include: team management and coordination, scheduling, cost controls and Change Order management, submittal process management, subcontracting, field management, safety program, closeout process, and warranty period services. This responsibility includes providing, through itself or its Subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities needed to complete construction of all Work consistent with the Construction Documents.
- 2.6.2 CMAR will perform all construction Work, services, and activities efficiently and with the requisite expertise, skill, quality, and competence necessary to satisfy the requirements of the Contract Documents. CMAR will at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.
- 2.6.3 CMAR will only employ Subcontractors (of any tier) who are properly licensed and fully able and committed to performing the Work in compliance with the Construction Documents and with the same degree of skill, quality and competence as CMAR.
- 2.6.4 CMAR is fully responsible for the work of its Subcontractors and any of their acts and omissions in connection with the performance of their work. Nothing in the Contract Documents creates any legal or contractual relationship between COUNTY and a Subcontractor (of any tier). In addition, nothing in the Contract Documents creates any third-party beneficiary rights.
- 2.6.5 CMAR is responsible for coordinating the activities and Work of all Subcontractors. If COUNTY is performing other work with separate Contractors under COUNTY's control, CMAR agrees to cooperate and coordinate its Work with the work of COUNTY's separate Contractors so that the Project can be completed in an orderly, efficient, and coordinated manner reasonably free of significant disruption to any party.
- 2.6.5.1 COUNTY reserves the right to award other contracts related to the Project, or to perform certain portions of the Work itself. Any such other work may or may not be known to COUNTY or disclosed to the CMAR prior to execution of the Contract. The CMAR will afford COUNTY and such other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and will properly coordinate its work with theirs in such manner as COUNTY or DP may direct. The CMAR will also assure at its own cost reasonable access of other contractors to their site and their work.
- 2.6.5.2 Upon request of CMAR, COUNTY will provide CMAR with a copy of Drawings, Specifications, Schedules or other needed data relating to such other contracts or work as may be necessary to meet CMAR's duty to coordinate. The CMAR will thoroughly examine these documents and within three (3) work days of completing such examination will notify COUNTY in writing of any conflicts with the Work to be performed by the CMAR. In no event will such notice be given by CMAR so late as to interfere with or delay the Work to be performed by the CMAR. Failure of the CMAR to request, review, or provide written notice as provided above constitutes a waiver of any objections or claims the CMAR may otherwise have as a result of the necessity to coordinate the CMAR's Work with other activities.
- 2.6.5.3 Should the CMAR sustain any damage through any act or omission of any other contractor or subcontractor, CMAR has no claim or cause of action against COUNTY for such damage and hereby waives any such claim. The CMAR does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor or subcontractor. The phrase "act or omission" as used in this section includes, but is not limited to, any delay on the part of any such other contractor or subcontractor, whether due to negligence, gross negligence, inadvertence, or any other cause.

- 2.6.5.4 Should the CMAR cause damage to the work or property of any other contractor or subcontractor of COUNTY, the CMAR will upon receiving due notice of damage promptly attempt to settle with such other contractor by contract, repair, or otherwise to resolve the dispute. If any such separate contractor sues or initiates a proceeding against COUNTY on account of any damage alleged to have been caused by the CMAR or its subcontractors, COUNTY will notify the CMAR who will at its own cost indemnify and defend County in such proceedings, or pay the costs of COUNTY defending such proceedings, and if any judgment or award against the COUNTY arises therefrom, the CMAR will pay or satisfy it and will reimburse COUNTY for all attorney's fees and court or other costs which COUNTY has incurred in connection with the matter.
- 2.6.6 CMAR will keep the Site free from debris, trash, and construction waste to permit CMAR to perform its construction services efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage and staging areas. CMAR is also responsible for and will take precautions and measures to fully secure, safeguard, and protect the Work during the Construction Phase. Unless previously released of responsibility by COUNTY, CMAR's responsibility to secure, safeguard, and protect continues until final completion and acceptance.
- 2.6.7 Upon Substantial Completion of the Work, or a portion of the Work, CMAR will remove all debris, materials, waste, equipment, machinery, and tools from the Work so as to permit COUNTY to safely occupy the Work or a portion of the Work for the use for which it is intended.
- 2.6.8 CONTROL OF THE WORK**
- 2.6.8.1 The CMAR will supervise and direct the work of its employees and Subcontractors and coordinate the work with the activities and responsibilities of COUNTY and the DP so as to complete the Work in accordance with COUNTY's objectives of cost, time, and quality as set forth in the Contract Documents.
- 2.6.8.2 The CMAR will establish an on-site organization with lines of authority in order to carry out the overall plans for completion of the Work.
- 2.6.8.3 The CMAR will schedule, notice, conduct, and take and distribute minutes of weekly progress meetings at which COUNTY, DP, and CMAR can discuss jointly such matters as procedures, progress, and problems.
- 2.6.9 DAILY LOG**
- 2.6.9.1 The CMAR will maintain a daily log of construction activities for each calendar day of the Contract Time, using a form pre-approved by the DP. In that log, the CMAR will document all activities at the Work site, including, but not limited to:
- a. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect work at the site;
  - b. Soil conditions which adversely affect work at the site;
  - c. The hours of operation by CMAR and individual Subcontractor personnel;
  - d. The number of CMAR and Subcontractor personnel present and working at the site, by subcontract and trade, and updated schedule activity number;
  - e. The equipment active or idle at the site;
  - f. A description of the work being performed at the site by updated schedule activity number;
  - g. Any delays, disruptions or unusual or special occurrences at the site;
  - h. Materials received at job site; and
  - i. A list of all visitors at the site.
  - j. Any other relevant information as to activities on the site that day.

2.6.9.2 The CMAR will provide copies of the daily logs to COUNTY on a weekly basis. The daily log does not constitute written notice to COUNTY of any event or occurrence when such notice is required by the Contract Documents.

2.6.9.3 Any changes affecting previously approved work requires prior written approval of COUNTY.

#### **2.6.10 SUPERVISION AND CONSTRUCTION PROCEDURES**

2.6.10.1 The CMAR will supervise and direct the Work using the CMAR's best skill and attention. The CMAR is solely responsible for the coordination and accomplishment of all portions of the Work under the Contract Documents.

2.6.10.2 CMAR is responsible to COUNTY for the acts and omissions of CMAR's employees, Subcontractors of all tiers, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with the CMAR.

2.6.10.3 The CMAR will not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities or duties of the DP in its administration of this Contract, or by inspections, tests, or approvals required or performed by persons other than the CMAR. Nothing contained in this paragraph precludes the CMAR from asserting any rights it may have under this Contract in the event of unreasonable delays to the CMAR in the conduct of any inspections, test, approvals, or other actions by the DP upon which CMAR's schedule depends.

2.6.10.4 The CMAR will employ a competent COUNTY-approved Superintendent and necessary assistants, who will be in attendance at the Project site during the progress of the Work. The CMAR will also employ a COUNTY-approved Representative together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction work. Once designated, the Superintendent and Representative of CMAR will not be changed except with the prior consent of COUNTY, unless the Superintendent or Representative proves to be unsatisfactory to the CMAR or ceases to be in its employ. The Superintendent and Representative will represent the CMAR and all communications given to the Representative are binding on the CMAR. All such communications will be confirmed in writing.

2.6.10.5 The CMAR will at all times enforce strict discipline and good order among its employees and its Subcontractors' employees, and will not allow employment on the Work of any unfit person or anyone not skilled in and capable of performing the task assigned to them.

2.6.10.6 The CMAR will at all times allow COUNTY, DP, or any other designated representatives access to the construction work to observe progress and inspect the quality of work and conformance to the Construction Documents.

2.6.10.7 Any Work required to be inspected by the DP or COUNTY prior to being covered, which is covered up without prior inspection or without prior consent of the DP or COUNTY, must be uncovered by the CMAR, if requested by the DP or the COUNTY, and then re-covered at no cost to COUNTY, notwithstanding the provisions of the following subsection.

2.6.10.8 CMAR will notify COUNTY and DP in writing at least twenty-four (24) hours prior to the time at which COUNTY or DP must be present to perform an inspection. Failure to provide such notice makes the CMAR solely responsible for all consequences of non-inspection and any required access to or uncovering of such Work.

## 2.6.11 ADMINISTRATION

2.6.11.1 Except as may be expressly provided to the contrary in the Contract Documents, the CMAR's Representative will forward all communications in writing and all documents simultaneously to COUNTY's Representative and the DP's Representative as listed below:

DP's Representative: (NAME)	CMAR's Representative: (NAME)	CMAR's Superintendent: (NAME)	COUNTY's Representative: (NAME)
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## 2.6.12 DRAWINGS AND SPECIFICATIONS

2.6.12.1 The CMAR will study and compare the Construction Documents prior to beginning Work on each phase or portion of the Work and immediately report any material error, inconsistency, conflict, ambiguity, or omission that is discovered to the DP and COUNTY.

2.6.12.2 The Construction Drawings are intended to show general arrangements, design, and extent of Work and are not intended to serve as Shop Drawings. Where required, the CMAR will perform no portion of the Work without having Shop Drawings, Product Data, or Samples approved; any Work performed in violation of this provision will be solely at the CMAR's risk regardless of DP's or COUNTY's knowledge of such Work being performed.

2.6.12.3 In the event of any conflict or ambiguity, the Construction Documents will be interpreted as being complementary, requiring delivery by CMAR of a complete Project, or designated portion thereof. Any requirement occurring in any one of the Construction Documents is as binding as though occurring in all Construction Documents. In the event of any conflict or ambiguity, perceived or real, the CMAR will request an interpretation by the DP before performing the Work. Generally, the Specifications address quality, types of materials, and contractual conditions while the Drawings show placement, sizes, and fabrication details of materials. In the event a conflict is discovered in the Construction Documents, the priorities stated below govern and control:

- a. Amendments govern over all other Construction Documents;
- b. Subsequent amendments govern over prior amendments, but only to the extent modified;
- c. In case of conflict between Drawings and Specifications, the Specifications govern;
- d. Conflicts within the Drawings:
  - (1) Schedules, when identified as such, govern over all other portions of the Drawings.
  - (2) Specific notes govern over all other notes and all other portions of the Drawings, except the schedules described in 2.6.12.3(d)(1) above.
  - (3) Larger scale drawings govern over smaller scale drawings.
  - (4) Figured or numerical dimensions govern over dimensions obtained by scaling.
- e. Conflicts within the Specifications: These General Conditions govern over all sections of the Specifications except for specific modifications thereto that may be stated in Special Conditions or amendments. No other section of the Specifications modifies these General Conditions; and
- f. In the event provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality governs.

2.6.12.4 In the event of conflict between COUNTY's Technical Standards and the Drawings and Specifications, CMAR will promptly call the conflict to the attention of COUNTY and DP and will defer the use of such Drawing until resolution of the conflict to COUNTY's satisfaction.

2.6.12.5 If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction,

such detail will be an implied requirement of the Construction Documents in accordance with such standard. That is to say, a) "minor detail" includes the concept of substantially identical components, where the price of each such component is small even through the aggregate cost or importance is substantial, and includes a single component which is incidental, even though its cost or importance may be substantial; and b) the quality and quantity of the parts or materials so supplied will conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

### **2.6.13 SUBMITTALS, DRAWINGS AND SHOP DRAWINGS**

- 2.6.13.1 The CMAR will maintain at the Site, for the use of COUNTY and of the DP, one copy of all Drawings, Specifications, bulletins, amendments, Change Orders, field orders, approved Shop Drawings, approved Submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees, and other contract-related documents and their modifications, if any, in good order and marked daily by the CMAR to record all approved changes made during construction. The CMAR will turn over all of these to the DP at the time of Substantial Completion for the purpose of the DP assembling and correlating the material for use by COUNTY.
- 2.6.13.2 The CMAR will submit to the DP, with such promptness as to cause no delay in its work or in the work of any other Contractor, all Submittals and Shop Drawings as are required by the Construction Documents, or are necessary to illustrate details of the Work.
- 2.6.13.3 Each Submittal and Shop Drawing must be accompanied by a CMAR transmittal letter containing a list of the titles and numbers of the Shop Drawings. Each series must be numbered consecutively for ready reference. Each Submittal and Shop Drawing will be marked with the following information:
- a. Date of Submission
  - b. Name of Project
  - c. Location of Project
  - d. Branch of Work (Specification Section)
  - e. Project Number
  - f. Name of Submitting CMAR
  - g. Name of Subcontractors
  - h. Revision Number

Submittals identified by COUNTY will be submitted to COUNTY for its review concurrent with review of same by DP. During Construction Phase CMAR will promptly provide COUNTY with an electronic copy of all approved submittals.

- 2.6.13.4 The CMAR will review all Subcontractor Submittals and Shop Drawings prior to being submitted to the DP and each must bear a written statement by the CMAR that the Submittals and shop drawings are consistent with the Construction Documents and other Contract Documents or, if not totally consistent, they must bear a written statement indicating all variances from the Construction Documents and other applicable Documents. Any submittals or shop drawings submitted without the statements will be returned for resubmission; the submittals or shop drawings will be considered as not having been submitted; and any delay caused thereby is the CMAR's sole responsibility. This review by CMAR of Subcontractor submittals and shop drawings is not CMAR approval of the design therein except that it is a representation that the letter accompanying the submittal or shop drawings does indicate all variations from the Construction Documents and other Contract Documents as required by Section 2.6.13.5.



- 2.6.13.5 The CMAR will include with Submittals and Shop Drawings, a letter indicating all variances from the DP's Drawings and Specifications. Failure to so notify the DP of such variances will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the variances are not acceptable, the CMAR must furnish the item as specified or as indicated on the Construction Drawings.
- 2.6.13.6 The CMAR must check all of its Submittals and Shop Drawings and be fully responsible for them and for coordination with connecting Work. Submittals and Shop Drawings must indicate in detail all parts of an item of Work, including erection and setting instructions and engagements with work of other trades or other separate Contractors.
- 2.6.13.7 By the act of reviewing or submitting Submittals or Shop Drawings, the CMAR thereby represents to COUNTY and DP that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that it has checked and coordinated each Submittal and/or Shop Drawing with the requirements of the Work and of the Construction Documents. If any specified material item or part is not available, the CMAR must so indicate to the DP.
- 2.6.13.8 The DP will review and approve Submittals and Shop Drawings and return them to the CMAR within twenty (20) calendar days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the CMAR must assume a 20-day review period for each Submittal or set of Shop Drawings, and ten (10) calendar days for resubmittals, except for complex submittals identified by the DP as having significant deficiencies, in which event the resubmittal turnaround time will be within twenty (20) calendar days. If review and approval are delayed beyond twenty (20) calendar days, the DP will notify the CMAR and COUNTY in writing stating the reason for the delay. Approval does not relieve the CMAR from the responsibility for variances from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of COUNTY to effect an improvement in the Work and does not increase the GMP or Contract Time. Any such modification is subject generally to all other provisions of the Construction Documents, and is without prejudice to any and all rights under any surety bond.
- 2.6.13.9 If the DP returns a Submittal or Shop Drawing to the CMAR with the notation "rejected", "revise and resubmit", or "approved as noted", the CMAR, so as not to delay the Work, will promptly resubmit a Submittal or Shop Drawing conforming to the requirements of the Construction Documents and indicating in writing on the Submittal or Shop Drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. CMAR will also indicate any other differences between the resubmittal and the prior submittal on the Shop Drawing and on the resubmittal as a special note.
- 2.6.13.10 No extension of Contract Time will be granted to the CMAR because of its failure to submit Submittals or Shop Drawings in ample time to allow for review, possible resubmittals, and approval. Fabrication of Work will not commence until the CMAR has received written approval. The CMAR will furnish prints of its approved Submittals and Shop Drawings to all the Subcontractors whose work is in any way related to those Submittals or Drawings. Only prints bearing this approval will be allowed on the Site.

#### **2.6.14 PRODUCT SAMPLES, TESTS, AND CERTIFICATES**

- 2.6.14.1 The CMAR will furnish Product Samples of all items requested or required by the Specifications. Product Samples must be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other Contractor and to allow time for consideration by the DP and the COUNTY. The DP or COUNTY will review Product Samples in accordance with Sections 2.6.13.2 – 2.6.13.10 above.

- 2.5.14.2 Each Product Sample must be accompanied by a letter of transmittal containing the following information:
- a. Date of Submission
  - b. Name of Project
  - c. Location of Project
  - d. Branch of Work (Specification Section Number)
  - e. Project Number
  - f. Name of Submitting CMAR
  - g. Name of Subcontractor
- 2.6.14.3 The CMAR will furnish the DP a certificate stating that material or equipment submitted by CMAR complies with Contract Documents. If a certificate originates with the manufacturer, the CMAR will endorse it and submit it to the DP together with a statement of compliance in its own name.
- 2.6.14.4 No tests, inspections or approvals performed or given by the COUNTY or the DP or others acting for COUNTY or any agency of Federal, State, or Local government nor any acts or omissions by COUNTY or the DP in administering this Contract relieve the CMAR from its duty to perform the Work in accordance with the Contract Documents and all applicable law or regulation or code.
- 2.6.14.5 Unless the DP is authorized at the time of submittal to return samples at the CMAR's expense, rejected samples will be destroyed.
- 2.6.14.6 After delivery of materials by CMAR, the DP may make such tests, as it deems necessary, with samples required for such tests being furnished by and at the cost of the CMAR. Any test is for the benefit of the COUNTY and does not relieve CMAR of the responsibility for providing quality control measures to assure that the Work strictly complies with the Construction Documents. No test implies acceptance of materials, Work, workmanship, equipment, accessories or any other item or thing.
- 2.6.14.7 Materials, workmanship, equipment or accessories may be rejected on the basis of the test results even though general approval has been previously given. If items have been incorporated in the Work, the DP has the right to cause their removal and replacement by items meeting Construction Document requirements, with the cost therefor being borne by the CMAR and not COUNTY, or to demand and secure appropriate reparation to or price adjustment for the benefit of COUNTY from the CMAR.

## **2.6.15 AS-BUILT DRAWINGS**

- 2.6.15.1 Prior to Final Payment, the CMAR will complete and turn over to the DP the Red Line Drawings kept current at the Project site by CMAR. Red Line Drawings will consist of a set of drawings that clearly indicate all field changes that were made during contract performance to adapt to field conditions, changes resulting from Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility must be accurately located on the Red Line Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The Red Line Drawings must be clean and all changes, corrections, and dimensions will be given in a neat and legible manner in a contrasting color. CMAR will also provide an electronic file of the Red Line Drawings to COUNTY in digital form pre-approved by COUNTY. The DP will use the CMAR Red Line Drawings to finalize and seal the As Built Drawings (Record Drawings) which, in turn, will be turned over to COUNTY at the end of construction.

- 2.6.15.2 With respect to any changes or corrections in the Work which are made subsequent to Substantial Completion, such revisions must be submitted to the DP for approval prior to Final Payment.

#### **2.6.16 SCHEDULE AND COORDINATION**

- 2.6.16.1 The CMAR will schedule and coordinate the Work of all of its Subcontractors on the Project including their use of the Site. The CMAR will keep the Subcontractors informed of the Project CPM Schedule to enable the Subcontractors to plan and perform their Work properly.
- 2.6.16.2 At the time of the submission of the GMP, the CMAR will submit to the DP a detailed CPM Schedule for the Work, which will provide for the expeditious and practicable execution of the Work. The CPM Schedule will be consistent with and build upon any previous schedules issued during the Pre-Construction Phase. The CPM Schedule is not to exceed time limits under the Contract Documents and must be related to the entire Work to the extent required by the Contract Documents.
- 2.6.16.3 The CPM Schedule required for the performance of the Work will include reasonable detail including a time scaled network and computer printout in accordance with the following requirements:
- a. no activity may be longer than twenty-one (21) calendar days (i.e. task line item duration in the CPM Schedule) in length except fabrication and delivery activities;
  - b. each activity must be logically tied to another activity to show its interdependency with other activities;
  - c. installation activities must be logically tied to submittal/approval, fabrication and delivery;
  - d. only a single critical path is allowed; and
  - e. all activities on the schedule must be clearly designated.
- 2.6.16.4 The CMAR will prepare and keep current, for the DP's approval, a timetable for submittals which is coordinated with the CMAR's CPM Schedule for the Work and allows the DP the specified time to review submittals.
- 2.6.16.5 The CMAR will revise the CPM Schedule monthly to reflect actual conditions in the field and transmit it monthly to COUNTY and DP with a copy and a Narrative Report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed. This update is to be submitted with each Application for Progress Payment. COUNTY's review of the CPM Schedule update does not relieve CMAR of its complete and exclusive control over the means, methods, sequences, and techniques of construction. The monthly updated CPM Schedule will be the basis for the analysis and granting or rejection of time extensions in accordance with Article 9 of these General Conditions.
- 2.6.16.6 In addition to the monthly CPM Schedule update, the CMAR will also revise its schedule at appropriate intervals as required by the conditions of the Work or as directed by COUNTY or DP with a printed and electronic copy of the revision submitted to COUNTY and DP in a format acceptable to COUNTY.
- 2.6.16.7 The CMAR will perform the Work at all times during the Construction Phase within the identified times of the most recent COUNTY-approved schedule and consistent with the established Contract Time.
- 2.6.16.8 If the CMAR submits an original or updated CPM schedule which shows the Project and/or individual Milestone(s) for the Project completing earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and

the required completion will be considered Project-owned float available for use by both COUNTY and the CMAR.

2.6.16.9 Since float time within the CPM Schedule is jointly owned, COUNTY will grant no time extensions and will pay no delay damages until a critical path activity delay occurs which extends the Work beyond the adjusted contractual completion date. Since float time within the CPM Schedule is jointly owned, COUNTY-caused delays on the Project may be offset by COUNTY-caused time savings which result in a critical path activity savings of time to the CMAR. In that event, the CMAR is not entitled to receive a time extension or delay damages until all COUNTY-caused time savings are exhausted and the applicable contractual completion date or milestone date is also exceeded.

2.6.16.10 No time extensions will be granted or delay damages paid unless 1) the delay is clearly demonstrated by the updated CPM Schedule and the current and supporting narrative as of the month the change was issued or occurred, or the delay took place, and 2) the delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other reasonable or industry recognized means of mitigating schedule slippage.

## **2.7 CMAR's RESPONSIBILITY FOR PROJECT SAFETY**

2.7.1 CMAR recognizes the importance of performing its Work in the safest manner possible so as to prevent damage, injury or loss to (a) all individuals at or in the vicinity of the Work, whether working or visiting the Project; (b) all Work, including materials and equipment incorporated or stored on or off site; and (c) all property adjacent to the site. On that basis CMAR assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work and will submit a Safety Plan in complete form to COUNTY and DP at the time of issuance of the Notice to Proceed with the Work. CMAR will, prior to commencing construction, designate a safety manager with the necessary qualifications and experience to supervise the implementation of the plan and the monitoring of all safety precautions and programs related to the Work. The safety manager will make routine daily inspections of the Work site, and will hold at least weekly safety meetings with CMAR's personnel and Subcontractors.

2.7.2 CMAR and its Subcontractors will comply with all legal requirements relating to safety, as well as any COUNTY specific safety requirements set forth in the Contract Documents. CMAR will immediately report, in writing, to COUNTY's Representative and all government or quasi-government authorities having jurisdiction over matters involving the Work, any injury, loss, damage, or accident occurring at the site of the Work.

2.7.3 CMAR's responsibility for safety under this Section 2.7 is not intended to relieve CMAR's Subcontractors (of any tier) from applicable obligations and responsibilities for complying with all legal requirements, including those related to health and safety matters, and their taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the Work.

## **2.8 WARRANTY**

2.8.1 CMAR warrants to COUNTY that the construction, including all materials and equipment furnished as part of the Work, will be new, unless otherwise specified in the Contract Documents; of good quality, in conformance with the Contract Documents; and free of defects in materials and workmanship. CMAR's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain the Work by persons other than CMAR, CMAR's subcontractors, or others under CMAR's control. Nothing in this warranty by CMAR limits any manufacturer's warranty which provides COUNTY with greater warranty rights than set forth in this Section 2.8 or the Contract Documents.

2.8.2 CMAR will provide COUNTY with all manufacturers' warranties and Operation and Maintenance Manuals upon the date of Substantial Completion of the Work. CMAR will provide COUNTY a two (2) year warranty

for all portions of the Work, which warranty commences upon Substantial Completion and acceptance by the COUNTY of the final phase of the Project. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited or superseded by this provision.

- 2.8.3 The Warranties identified herein do not limit or control other remedies available to COUNTY at law or their limitation periods, if any.

## **2.9 CORRECTION OF DEFECTIVE WORK**

- 2.9.1 If any portion of the Work is covered over by CMAR or its subcontractor contrary to the request of the DP or COUNTY, or as required by the Construction Documents, or the applicable building standards or codes if requested in writing by the DP or COUNTY, that Work or portion thereof must be promptly uncovered for observation at the CMAR's own expense.
- 2.9.2 If any portion of the Work, other than those portions required to be inspected by the DP, COUNTY, or others, prior to being covered, has been covered over, the DP or COUNTY may request that it be uncovered for observation. If such portion of the Work is found to be in accordance with the requirements of the Construction Documents, the cost of uncovering it will be charged to COUNTY as a Change Order. If such portion of the Work is found not to be in compliance with the requirements of the Contract Documents, the CMAR shall bear such costs to uncover, to remove and replace, or to repair.
- 2.9.3 Unless a specific written waiver of such non-conformance has been provided to the CMAR, CMAR will promptly correct any Work that is found not to be in conformance with the Contract Documents, whether previously inspected by COUNTY's representatives or not. This obligation of CMAR continues for a period of two (2) years from the date of Substantial Completion. Nothing in this Section waives any other rights or remedies that COUNTY may have under applicable law.
- 2.9.4 CMAR, upon receipt of written notice from COUNTY that the Work is not in conformance with the Contract Documents, will, within seven (7) days (except in the case of an emergency or an item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Work, including the correction, removal, or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. In the event CMAR fails to commence the necessary corrective steps within seven (7) days of the Notice, COUNTY, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period commence to correct or cause the correction of such nonconforming Work with its own or other forces. CMAR is responsible for all costs and expenses that COUNTY incurs in remedying any such Work not in conformance with the Contract Documents, including at COUNTY's sole discretion, any of its own staff time costs and all DP or other fees incurred. COUNTY will notify CMAR of its intent to make such corrections at or before the commencement of the corrective work.
- 2.9.5 The two-year warranty period referenced in Section 2.8.1 applies only to the CMAR's obligation to correct Work not in compliance with the Construction Documents, and does not constitute a period of limitations with respect to any other rights or remedies COUNTY may have with respect to CMAR's other obligations under the Contract Documents. CMAR acknowledges that, for purposes of statutes of limitations, COUNTY is a body politic and corporate of the State of Arizona acting in its governmental capacity for the general good.

## **ARTICLE 3 – DP'S SERVICES AND RESPONSIBILITIES**

In addition to the DP Responsibilities outlined in Article 2,

- 3.1 The DP will be the initial interpreter of the intent and requirements of the Construction Documents. The DP will render written initial interpretations with reasonable promptness following a written request from COUNTY or the CMAR. These initial interpretations will be consistent with the intent of the Contract Documents.

- 3.2 The DP will timely review and approve or take other appropriate action upon the CMAR's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the Construction Documents. The DP will take such action with reasonable promptness as specified so as to cause no delay. The DP's approval of a specific item or component does not indicate approval of an assembly of which the item is a component.
- 3.3 Following consultation with COUNTY, the DP will take appropriate action on issuance of Change Orders and may authorize minor changes in the Work as defined in Section 10.3.
- 3.4 The DP and COUNTY each have authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing but may take such action only after consultation with the other. However, neither the authority to act given to the DP and COUNTY under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority gives rise to any duty or responsibility by them to the CMAR, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 3.5 Based on its observations of the Work and evaluation of applications for payment, COUNTY or COUNTY'S designee will have the responsibility to approve the amounts owing the CMAR from time to time under and in accordance with Article 7 of these General Conditions and applicable law.

### **3.6 DESIGN SERVICES**

- 3.6.1 Under separate contract with COUNTY, the DP will submit to COUNTY all required Design Submission Documents to describe the Project's essential elements. The Design Submissions required of the DP include Drawings, Specifications, cost estimates, and other documents as may be necessary to fully identify the Project scope and materials. The CMAR will submit detailed cost estimates as part of the design submission to COUNTY. At the time of the scheduled submissions, CMAR, DP, and COUNTY will meet and confer about the submission with CMAR and DP identifying during the meeting, among other things, the evolution of the design and any significant changes or variances from the requirements of the Contract Documents, or previously submitted design submissions, and, if any, changes in anticipated costs.
- 3.6.2 DP will maintain minutes of these milestone design review meetings and will provide them to all attendees for review. Following the design review meeting, COUNTY will review and approve or reject the Design Submission within three (3) weeks from receipt. COUNTY may reject full or partial design submittals which do not conform with COUNTY's Project Criteria, overall Project concepts, and budgets, or for any other reasonable cause consistent with the intent of the Contract Documents. Upon such rejection, the DP will redesign or reengineer the rejected portion of the design. CMAR will revise the cost estimate at no additional cost, such that it meets COUNTY's requirements. COUNTY must approve all variances from COUNTY's Project Criteria in writing.
- 3.6.3 As necessary for the timely completion of the Work, the DP will submit to COUNTY for COUNTY's review and approval or rejection, Construction Documents describing the requirements for construction of the Work. The COUNTY, DP and CMAR will have design review meetings to discuss Construction Documents consistent with Section 3.6.1 above, and COUNTY will review and approve or reject the Construction Documents within three (3) weeks of receipt from the DP.
- 3.7 The DP, if so stated through this Contract, or a third party Project Manager under a separate contract with COUNTY, will provide administration of this Contract on behalf of COUNTY as described throughout the Contract and these General Conditions and in COUNTY's contract with the DP. DP is to copy COUNTY on all instructions and communications by the DP to the CMAR.

**ARTICLE 4 COUNTY'S SERVICES AND RESPONSIBILITIES**

In addition to its responsibilities outlined in Article 2,

- 4.1 COUNTY will, throughout the performance of the Contract, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.
- 4.2 COUNTY's Representative is responsible for processing and delivery of COUNTY-supplied information and approvals or rejections in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents. COUNTY's Representative will also provide CMAR with reasonably prompt notice if and when it observes any failure on the part of CMAR to fulfill its contractual obligations, including errors, omissions, or defects in the CMAR's performance of its Work. Failure of COUNTY or its representatives to notify the CMAR hereunder will not alter the duties and obligations of CMAR under the Contract Documents.
- 4.3 COUNTY will provide reviews and approvals or rejections of the CMAR's cost estimate portion of the Design Submission within three (3) weeks of receipt of those documents. COUNTY will review documents submitted by the CMAR and render any decisions pertaining thereto without unreasonable delay.
- 4.4 COUNTY is responsible for all Work performed at the Project by parties under COUNTY's control other than CMAR or DP. COUNTY will contractually require such parties to cooperate with and coordinate their activities with CMAR so as not to unreasonably interfere with CMAR's ability to complete the Work in a timely manner, consistent with the Contract Documents.
- 4.5 COUNTY will interact and cooperate with the CMAR to keep the Work within the portions of the Project Budget or GMP, as may be applicable, including but not limited to giving appropriate and reasonable consideration to all reasonable recommendations of the CMAR, approving redesign, deductive alternatives or reductions in the Work, consideration of any requested additional Value Engineering, making modifications to the Contract Documents, or exercising such other rights or remedies as may be available elsewhere under this Contract including termination for convenience. If at any time, it is apparent that the cost of the Work cannot be kept within the Project Budget or GMP, COUNTY may terminate this Contract in accordance with the termination for convenience provisions set forth below.
- 4.6 COUNTY acting through the DP and consistent with COUNTY's contract with the DP, will furnish the CMAR a sufficient quantity of documents and information required for the CMAR's performance of its Pre-Construction Services.

**ARTICLE 5 – HAZARDOUS MATERIALS AND UNFORESEEN PROJECT SITE CONDITIONS**

**5.1 HAZARDOUS MATERIALS**

- 5.1.1 It is the sole responsibility of the CMAR to properly remove and dispose of any Hazardous Materials in the Project identified as such in the Contract Documents by COUNTY. CMAR, upon encountering any Hazardous Materials not identified in the Contract Documents, will stop work immediately in the affected area and notify COUNTY and, if required by applicable rules, all governmental or quasi-governmental entities with jurisdiction over the Project. COUNTY has responsibility to take the necessary measures required to properly remove and dispose of Hazardous Materials not identified in the Contract Documents as being the responsibility of the CMAR.
- 5.1.2 CMAR will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in the GMP or Contract Time(s) of performance, or both, to the extent that the CMAR's costs or time of performance have been adversely and materially impacted by the presence of unforeseen or undisclosed Hazardous Materials.

- 5.1.3 COUNTY is not responsible for Hazardous Materials introduced to the site by CMAR, CMAR's Subcontractors (at any tier), or anyone else for whom the CMAR is responsible unless the Contract Documents explicitly call for either the provision or removal of the specific Hazardous Materials.
- 5.1.4 CMAR will indemnify, defend, and hold harmless COUNTY and others under COUNTY's control, and the officers, directors, employees and agents of each of them, from and against all claims, losses, liabilities, costs and expenses, including but not limited to attorney's fees and expenses, arising out of or resulting from CMAR's importation, improper handling, storage, abatement, removal, remediation, or disposal of any Hazardous Materials.
- 5.1.5 Releases of Hazardous Materials: Upon any release of any Hazardous Material in connection with the Work, whether relating to a pre-existing condition or to acts or omissions of CMAR, CMAR will take immediate action reasonably necessary to contain the release and if the Hazardous Material release is not a CMAR release, COUNTY will pay CMAR the reasonable costs incurred by CMAR in taking such containment action. COUNTY may elect to have CMAR control and carry out any removal and remediation activity needed, provided that if the release is not a CMAR release, COUNTY will be responsible to pay CMAR for such CMAR removal and remediation activities in accordance with the Change Order provision set forth in Section 10.4 of these General Conditions, including allowance of additional Contract Time.

## **5.2 UNFORESEEN PROJECT SITE CONDITIONS**

- 5.2.1 If CMAR encounters, during the performance of the Work, concealed or latent physical conditions or subsurface conditions at the Project which (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature which differ materially from the conditions ordinarily encountered and generally recognized as inherent in the sort of work provided for in the Contract Documents, CMAR will immediately provide written notice to COUNTY apprising COUNTY of the unforeseen conditions encountered. CMAR will not disturb or modify such conditions without COUNTY's prior written consent. COUNTY will promptly investigate CMAR's notice of an unforeseen site condition and advise CMAR of its findings and determination.
- 5.2.2 If COUNTY determines that the conditions encountered by CMAR under Section 5.2.1 are an unforeseen Project site condition, CMAR will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in its GMP or Contract Time(s) of performance, or both, to the extent that CMAR's cost or time of performance have been adversely impacted by the unforeseen conditions. Adjustments to GMP will be for the actual direct cost impact incurred by CMAR to address and resolve the unforeseen conditions.
- 5.2.3 COUNTY will not consider or allow any claim by the CMAR for an increase in the GMP or in Contract Time(s) without compliance with the advance notice requirement set forth above, submission of verifiable documentation of specific direct cost impact, and an adequate opportunity for COUNTY to investigate. Extensions of Contract Time(s) will be considered and allowed only when based upon submission of an updated CPM Schedule and supporting narrative showing an actual unavoidable delay to the Project Critical Path due to the unforeseen Project Site Conditions.
- 5.2.4 In no event will the Contract Time or GMP be adjusted for conditions that CMAR could or should have identified through past work or its investigations or survey of existing conditions prior to submission and establishment of the GMP and the GMP Schedule.
- 5.2.5 If COUNTY determines CMAR has no entitlement to an adjustment in GMP or Contract Time for what CMAR contends is an unforeseen Project Site Condition, CMAR may only proceed in pursuit of its position or claim in accordance with the Dispute Resolution provisions of the Contract.

## **5.3 ARCHEOLOGICAL CONDITIONS:**

If in the course of performing the Work, the CMAR, any subcontractor, or other persons or entities under the control of CMAR, encounter any Native American burial site or other archeological artifacts, CMAR will



immediately notify COUNTY and suspend any Work or activity in the vicinity of the burial site or artifact. COUNTY will determine with reasonable promptness what action, if any, needs to be taken and advise CMAR how to proceed or adjust the Work. Any claim for adjustment in Contract Time or GMP will be handled under 5.2.2 above.

## **ARTICLE 6 – RESERVED**

## **ARTICLE 7 – PAYMENT**

### **7.1 GUARANTEED MAXIMUM PRICE; SAVINGS.**

7.1.1 COUNTY will pay the CMAR for the CMAR's performance and the CMAR accepts the Pre-construction Phase Fee in full payment for Pre-construction services, and the Actual Cost of Work (as defined in Exhibit B hereto) plus the Construction Phase Fee for construction services, provided, however, that the amount paid to CMAR will not exceed the GMP as originally fixed or as adjusted from time to time as provided in these General Conditions.

7.1.2 Savings will be calculated and paid upon Final Completion of the Work. One hundred percent (100%) of all savings will be allocated to COUNTY. Savings returned to COUNTY will not include return of Construction Phase Fee for the amount of the savings, but will include an appropriate percentage of bonds and insurance premiums and taxes attributable to the savings amount. One hundred percent (100%) of allocations to GMP for allowance and contingency items that remain unused upon Final Completion will be returned to COUNTY.

### **7.2 SCHEDULE OF VALUES**

7.2.1 Before issuance of the Notice to proceed and commencement of the Work in the Construction Phase, the CMAR will submit to COUNTY, and COUNTY and the CMAR shall agree upon, a complete Schedule of Values on the items constituting the GMP following the sample outline in **Exhibit "B"**, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion of the Work. This Schedule of Values will also be the basis for payment as the Work progresses. Those portions of the Schedule of Values allocable to Work to be performed by Subcontractors of the CMAR will be finalized as and when the Subcontracts are executed. All estimated construction costs not specifically allocated to a Subcontract (including Work self-performed) or to Construction General Conditions will be allocated to "Bidding Contingency" and will, upon approval of COUNTY, be available for later use by the CMAR as Construction Contingency, for reallocation to other line items as provided for in these General Conditions.

### **7.3 APPLICATIONS FOR PROGRESS PAYMENTS**

7.3.1 CMAR will deliver to COUNTY (or such other person as is designated by COUNTY) on the last day of each month a sworn application for progress payment in the format specified by COUNTY. Each such application for payment will be based on the Schedule of Values and be in an amount determined by the percentage of completion of the Work in the month being billed. It will show the percentage of completion of each category of the Work performed in the billing period. The payment application must be accompanied (as separate documents) by (a) an updated CPM Schedule and narrative schedule update report as provided for herein; and (b) conditional lien waivers from each subcontractor or supplier entitled to progress payment thereunder. In addition, the CMAR will provide the following documentation upon specific request by COUNTY: a) a written accounting in a form agreed by CMAR and COUNTY of the actual cost of the Work completed; b) a report by CMAR on Subcontractor buy-out status, contract sums, and subcontractor pay applications; c) a copy of job cost ledger; d) a copy of timecards for all employees charged to the Project; and e) a copy each of Construction General Conditions invoices and purchase orders for the time periods periodically requested by COUNTY.

- 7.3.2 The CMAR Construction Phase Fee and the Construction General Conditions will be paid monthly in accordance with the percentage of completion of the Work. The amount approved and paid for progress achieved in the month billed for is not final acceptance of the Work and is subject to final adjustment at the time of Final Acceptance and Final Payment. At no time may the cumulative value of past progress payments plus the current requested progress payment on any pay application exceed the GMP as it may be adjusted under these General Conditions.
- 7.3.3 COUNTY, within seven (7) days after receipt of CMAR's application for progress payment, and no later, will either issue (a) a certificate of approval for payment of such amount as is invoiced in the payment application; or (b) specific written findings setting forth those items in detail in the estimate of the Work in the pay application that are not approved for payment under the Contract. All items in the payment application are considered approved that are not made the subject of the written detailed finding of non-approval.
- 7.3.4 COUNTY may withhold an amount from the progress payment to be made for the time period billed for a sufficient sum to pay the expenses that COUNTY reasonably expects to incur in correcting the deficiencies set forth in the written finding issued by the COUNTY as to the items not approved for payment.

#### **7.4 PAYMENT AND RETAINAGE**

- 7.4.1 Within fourteen (14) days following the receipt of the DP certificate of approval for payment and the written detailed findings of items not approved, if any, COUNTY will pay the amount due on the progress payment application to the CMAR. Payment will be limited to ninety percent (90%) of the value approved of the Construction Work in place and for materials suitably stored in accordance with Section 7.6.1, below, of these General Conditions during the month being billed. COUNTY will retain the remaining ten percent (10%) until the Contract is fifty percent (50%) complete, at which time COUNTY may, in its sole discretion, reduce the retainage to five percent (5%); provided that: (a) the CMAR is making satisfactory progress on the Contract; and (b) in COUNTY's sole judgment, there is no specific cause or claim requiring a greater amount than five percent (5%) to be retained. Thereafter, COUNTY will pay the CMAR ninety-five percent (95%) of the value of the Construction Work and materials on approved progress billings, unless and until COUNTY determines, in its sole discretion that satisfactory progress is not being made, at which time COUNTY may reinstate ten percent (10%) retainage. Such ten percent (10%) reinstatement is equal to ten percent (10%) of the total Contract value of Construction Work in place and materials stored. COUNTY's determinations concerning the satisfactory progress of the Work for retainage adjustment purposes is final.
- 7.4.2 Within sixty (60) days after the issuance of the Certificate of Final Completion by the DP and receipt by COUNTY of all other documents required from CMAR by the Contract Documents, COUNTY will pay all retained amounts to CMAR as part of Final Payment, provided, however, a) the Final Payment is not due from COUNTY until the CMAR delivers full and final unconditional lien releases in statutory form from all Subcontractors and major Suppliers acknowledging their having received payment in full (Any claim filed thereafter is the responsibility of the CMAR);, and b) if any claim remains unsatisfied after all payments are made by COUNTY, the CMAR will immediately, upon demand, refund to COUNTY all monies that COUNTY may be compelled to pay in discharging such unsatisfied claims including all costs, interest, and attorneys' fees.

#### **7.5 EARLY RELEASE OF SUBCONTRACTOR RETAINAGE**

- 7.5.1 If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to its Subcontract, the CMAR may request COUNTY to disburse the amount of Retainage allocable to such Subcontractor after delivering to COUNTY, when required by COUNTY, consent to such disbursement from such Subcontractor's surety, in a form satisfactory to COUNTY, and a final lien release from the Subcontractor. If COUNTY is satisfied that the Subcontractor's Work has been fully and finally completed in accordance with the Contract Documents, COUNTY may disburse said

Retainage to CMAR for payment over to the Subcontractor. However, the two-year warranty period with respect to such Subcontractor Work will not commence until Substantial Completion of the entire Project.

## **7.6 PAYMENT FOR ON-SITE AND OFF-SITE MATERIALS**

7.6.1 COUNTY will make progress payments when due to CMAR on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. COUNTY may similarly make payment to CMAR for materials and equipment suitably stored off the Site, conditioned upon the CMAR furnishing satisfactory evidence to COUNTY that (a) title to the materials and equipment will pass to COUNTY upon payment for same; (b) there are no claims of third parties; (c) the materials and equipment are adequately insured for full replacement value plus delivery; and (d) such other matters as COUNTY may reasonably request in order to protect its interests.

## **7.7 OWNERSHIP OF CONSTRUCTION WORK**

7.7.1 The CMAR warrants that title to all Construction Work included in an Application for Progress Payment will pass to COUNTY no later than the time of payment therefor. The CMAR further warrants and represents to COUNTY that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from COUNTY will, to the best of the CMAR's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the CMAR, its Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

7.7.2 As a condition precedent to Final Payment from COUNTY the CMAR will provide unconditional waivers of lien in statutory form from all Subcontractors, material suppliers, and other persons or entities having provided labor, materials and equipment relating to the Work.

## **7.8 SUBSTANTIAL COMPLETION**

7.8.1 When the CMAR believes the Work, or a portion thereof which the COUNTY wants and agrees to accept separately, is Substantially Complete, the CMAR will notify COUNTY and the DP and will submit to COUNTY and DP a comprehensive list of items to be completed or corrected as to that Work or all Work. Within five (5) working days of receipt of the CMAR's notice and list, COUNTY, the DP, and CMAR will jointly inspect the Project to determine whether Substantial Completion has in fact occurred. If COUNTY determines that the Work, or the relevant portion thereof, is Substantially Complete, COUNTY will issue the Punch List and the Certificate of Substantial Completion stating the date of Substantial Completion, which certificate will be executed by COUNTY, the DP, and the CMAR. The CMAR will thereupon proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alleviate or alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents.

## **7.9 FINAL COMPLETION AND FINAL PAYMENT**

7.9.1 Completion of all outstanding Work items noted in the Substantial Completion "Punch List" for the entire Work, or relevant portion thereof, and other Contract requirements are necessary for COUNTY to certify Final Completion. Requirements for this certification also include, but are not limited to, completion of equipment operating training for COUNTY and the submission and approval by COUNTY of a) all Record and Close Out Documents; b) copies of all Construction General Conditions and Purchase Orders not previously provided; and c) all required reports.

7.9.2 Conditions Precedent to Final Payment. Neither Final Payment nor any final release of Retainage become due until such time as CMAR submits all of the following to COUNTY:

- a. An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which COUNTY or COUNTY's property might be responsible or encumbered (less amounts withheld by COUNTY) have been paid or otherwise satisfied by CMAR;
- b. A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to COUNTY;
- c. Consent of Sureties to final payment;
- d. Unconditional waivers of lien in statutory form from all Subcontractors, material suppliers, and other persons or entities having provided labor, materials, and equipment relating to the Work;
- e. If required by COUNTY, other data establishing payment or satisfaction of obligations, such as receipts; releases; and waivers of liens, claims, security interests, or encumbrances arising out of the Contract Documents;
- f. All Project warranty documents;
- g. Final Subcontractor List;
- h. All approved Submittals and Shop Drawings (electronic copy);
- i. Schedule of Required Maintenance;
- j. Operation and Maintenance Manuals (electronic and hard copies);
- k. As-Builts (electronic copies, hard copies and BIM Model, if any);
- l. Any required COUNTY training provided by CMAR;
- m. State Fire Marshal and State Elevator Inspection approvals and certificates received, if applicable;
- n. Commissioning completed and reports received, if applicable; and
- o. Any other items identified by COUNTY, and agreed to by CMAR in Contract Documents, to be received by COUNTY.

7.9.3 If, after Substantial Completion of the Project has been achieved, Final Completion is materially delayed through no fault of the CMAR, or by the issuance of additional Change Orders by COUNTY, COUNTY may at its sole discretion, upon request of the CMAR, and without terminating the Contract, make payment to CMAR of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retainage, and if bonds have been furnished, the written consent of surety to payment for that portion of the Work fully completed must be delivered by the CMAR to the COUNTY, and such payment will be made under the terms and conditions governing Final Payment, except that such payment does not constitute a waiver of claims by either the CMAR or COUNTY.

7.9.4 Acceptance of Final Payment by the CMAR constitutes a waiver of all affirmative claims by the CMAR in connection with the Contract and construction of the Project. Final Payment by COUNTY constitutes a waiver of claims by COUNTY, except those arising from (a) liens, claims, security interests, and encumbrances arising out of the Work after final payment; (b) latent defects which COUNTY becomes aware of after Final Payment; or (c) the terms of warranties required by the Contract Documents and other rights provided under applicable law.

## 7.10 ALLOWANCES

7.10.1 The CMAR will include in the GMP all allowances required by the COUNTY. Items covered by allowances will be supplied for such amounts and by such persons or entities as the COUNTY may direct, but the CMAR is not required to employ persons or entities against which the CMAR makes reasonable objection. Unless otherwise provided in the Contract Documents:

- a. COUNTY will select materials and equipment under an Allowance within a reasonable time frame as defined in the COUNTY-approved Project CPM Schedule;
- b. Allowances will cover the cost to the CMAR of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- c. Allowances will not include professional or construction fees, Construction General Conditions, bond and insurance premiums;

- d. Allowances will cover CMAR's costs for unloading and handling at the Site, labor, installation costs and other expenses;
- e. Whenever costs are more than or less than Allowances, the GMP may be adjusted accordingly by Change Order in accordance with provisions of Article 10. The amount of the Change Order will reflect the difference between Actual Costs and the Allowances plus Fee on such difference in accordance with Article 10 hereof if the Actual Costs are greater than the allowances.

## 7.11 CONTINGENCIES

### 7.11.1 For Vertical Construction:

7.11.1.1 The GMP contains a line item for a "Bidding Contingency". The Bidding Contingency, upon approval of the COUNTY, is for the CMAR's use and will be increased by amounts not expended on other line item bid packages and will decrease by additional amounts required to be expended on other line item bid packages. Following completion of all contract execution by subcontractors (Project buy-out), Bidding Contingency becomes Construction (CMAR) Contingency and CMAR may use this Construction (CMAR) Contingency for legitimate unforeseen construction expenses, subject to COUNTY's review and approval. CMAR will submit detailed monthly reports to COUNTY indicating how the Construction (CMAR) Contingency was used in the reporting period, and the status of the Construction (CMAR) Contingency. COUNTY has the authority to reject any use of the Construction (CMAR) Contingency after it has been submitted if COUNTY believes, in its reasonable judgment, that some or all of the amount included in the use of the Construction (CMAR) Contingency is not a legitimate expense for the Project. Upon COUNTY's rejection of a Construction (CMAR) Contingency use, the CMAR will thereupon credit the Construction (CMAR) Contingency amount back to the Construction (CMAR) Contingency in the next subsequent payment request. Any amounts remaining in Bidding / Construction (CMAR) Contingency at Final Completion are Savings and will be allocated to COUNTY. Should the Bidding / Construction (CMAR) Contingency be exhausted prior to award of all the bid packages, any subsequent overruns in bid package costs will be the CMAR's sole responsibility, with no additional compensation due therefor from COUNTY.

7.11.1.2 Total Bidding Contingency will be determined pending mutual agreement by COUNTY and CMAR on GMP.

7.11.1.3 Upon award of each Bid Package, the difference between the CMAR's estimated Cost of the Work contained within the Bid Package, exclusive of contingency, versus the actual award cost thereof as determined by the bidding and award of the package will be promptly calculated. If the award cost exceeds the CMAR's estimated cost in the GMP, any necessary portion of the Bidding Contingency identified in subparagraph 7.11.1.2 above will be applied, subject to COUNTY's approval, to cover any overrun, and any underrun amount will be used to increase the Bidding Contingency.

### 7.11.2 Non-Vertical and Horizontal Construction:

7.11.2.1 The GMP may contain a line item for "Construction Contingency" for CMAR's use as a bidding contingency and for legitimate unforeseen construction expenses, subject to COUNTY's review. The amount of Construction Contingency represents CMAR's future risk from the point at which it is established. In establishing the amount of the initial Construction Contingency, CMAR will provide a description of the risks the Construction Contingency is intended to cover, including unresolved areas of concern identified in pre-construction, in such format as COUNTY may prescribe.

7.11.2.2 The amount of the Construction Contingency is not cumulative. At any given time, even if there are multiple GMPs, there will be only one Construction Contingency for the Work. The amount of the Construction Contingency may be adjusted by any Change Order, Contract

Amendment, or subsequent GMP to reflect CMAR's future risk from that point. The value of the Construction Contingency will not exceed the value stated in the most recent Change Order, Contract Amendment, or GMP.

- 7.11.2.3 "Legitimate unforeseen construction expenses" does not include expenses arising from factors the existence of which CMAR knew or should have known at time of establishment of the value of the Construction Contingency. As an example, the expense of relocating utilities in an intersection of which CMAR was or should have been aware as a result of prior work or Blue Staking for prior work in the intersection is not a "legitimate unforeseen expense."
- 7.11.2.4 CMAR will submit detailed monthly reports to COUNTY indicating how the Construction (CMAR) Contingency was used in the reporting period, and the status of the Construction (CMAR) Contingency. COUNTY may reject any use of the Construction (CMAR) Contingency after it has been submitted if COUNTY believes in its reasonable judgment that some or all of the amount included in the use of the Construction (CMAR) Contingency is not a legitimate expense for the Project. Upon COUNTY's rejection of a Construction (CMAR) Contingency use, the CMAR will thereupon credit the Construction (CMAR) Contingency amount back to the Construction (CMAR) Contingency in the next subsequent payment request. Any amounts remaining in the Construction (CMAR) Contingency at Final Completion are Savings and will be allocated to COUNTY. Should the Construction (CMAR) Contingency be exhausted prior to completion of the Work, any subsequent overruns are the CMAR's sole responsibility, with no additional compensation due therefor from COUNTY except for those items for which COUNTY is responsible under the Contract Documents.
- 7.11.3 CMAR will include in all subcontracts an explicit requirement that Change Orders between CMAR and the subcontractors will be priced consistently with the requirements of Article 10 of these General Conditions, with adequate itemized Change Order pricing regardless of whether or not there is a comparable Change Order between CMAR and COUNTY. In addition, CMAR will retain, and make available to COUNTY upon request, all bid documents including requests for proposals, requests for quotes, and bid responses from both successful and unsuccessful bidding subcontractors.

## **ARTICLE 8 – INDEMNIFICATION**

### **8.1 PROPRIETARY RIGHTS, PATENT AND COPYRIGHT INFRINGEMENT**

- 8.1.1 CMAR will defend any action or proceeding brought against COUNTY based on any assertion or claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any proprietary rights or United States patent or copyright, now or hereafter issued. COUNTY agrees to give prompt notice in writing to CMAR of any such action or proceeding and to provide authority, information and assistance in the defense of same. CMAR will indemnify and hold harmless COUNTY from and against all damages and costs, including attorney's fees, awarded against COUNTY or CMAR in any such action or proceeding. CMAR further agrees to keep COUNTY informed of all developments in the defense of such actions or proceedings.
- 8.1.2 In the event that COUNTY is enjoined from the operations or use of the Work, or any part thereof in connection with any proprietary rights, patent suit, claim, or proceeding, CMAR will at its sole expense take reasonable steps to procure the right or license to operate or use the Work. If CMAR cannot so procure the aforesaid right within a reasonable time, CMAR will then promptly, at CMAR's option and at CMAR's expense (a) modify the Work so to avoid infringement of any patents, or copyrights; or (b) replace said Work with Work that does not infringe or violate any such proprietary rights, patent, or copyright.
- 8.1.3 Sections 8.1.1 and 8.1.2 above do not apply to any action or proceeding based on infringement or violation of a proprietary right, patent, or copyright (a) relating solely to a particular process or the product of a particular manufacturer specified by COUNTY and such processes or products are

something other than that which has been offered or recommended by CMAR to COUNTY; or (b) arising from modifications to the Work by COUNTY or its agents after acceptance of the Work.

8.1.4 CMAR's warranty and indemnification obligations survive expiration or termination of this Contract unless otherwise specifically stated.

8.1.5 The obligations set forth in this "Proprietary Rights, Patent and Copyright Infringement" section constitute the sole agreement between the parties relating to liability for infringement or violation of any proprietary rights, patent or copyright.

## **8.2 GENERAL INDEMNITY**

CMAR will indemnify, defend, save, and hold harmless COUNTY and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, by the negligent or willful acts or omissions of CMAR or any of its owners, officers, directors, agents, employees, or subcontractors, arising out of performance of the Work or this Contract, or in connection with the Project or defects in the Work, or any materials supplied. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such CMAR to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. CMAR will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the CMAR waives all rights of subrogation against Indemnitees for losses arising from the Work performed by the CMAR for COUNTY.

## **8.3 CUMULATIVE RIGHTS**

The rights of indemnification in this Article 8 are cumulative and in addition to any other rights of indemnification under this Contract. Nothing in this Article 8 limits or otherwise impairs any other right of indemnification in this Contract.

## **ARTICLE 9 – TIME AND DELAY**

9.1.1 All time limits set forth in the Contract Documents for performance are of the essence of this Contract. CMAR agrees that it will commence performance of the Work, achieve Substantial and Final Completion of the entire Project, and achieve any interim Milestones for Substantial and Final Completion in compliance with all contractual time requirements.

9.1.2 Time is of the essence of each and every part of the Contract Documents and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act or activity whatsoever. Where, under the Contract Documents, additional time is allowed for the completion of any Work, the new time limit fixed by such extension is also of the essence of this Contract.

9.1.3 Failure of the CMAR to achieve the completion dates for Substantial or Final Completion set forth in the Contract will result in the assessment of Liquidated Damages as required by the Contract. CMAR will pay the per diem amount for Liquidated Damages provided for in the Contract for each and every calendar day that the CMAR is not in full compliance with the time(s) stipulated in the Contract for completing the Work. The Liquidated Damages per diem amount is fixed and agreed upon by and between the CMAR and COUNTY because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the COUNTY would in such event sustain. COUNTY may withhold any such sums from Final Payment due hereunder or from retainage.

9.1.4 If CMAR is delayed in the performance of the Work and such delay actually and directly delays a timely achievement of a critical path activity, element, or component, based upon an analysis of the current CPM Schedule due to acts, omissions, conditions, events, or circumstances beyond its reasonable control or prevention and due to no legal fault of its own or those for whom CMAR

is responsible under the terms of the Contract Documents, the time for Substantial Completion of the Work, and to the extent applicable, any interim milestones or Substantial Completion dates for portions of the Work will be extended by written Change Order for the amount of time attributable to such events or circumstances. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle CMAR to an extension of the Contract Time(s), include acts or omissions of COUNTY, or anyone under COUNTY's control, including changes made by separate contractors in the Work by COUNTY, unforeseeable Project site conditions, wars, floods, labor disputes, unusual delay in transportation, and unusually adverse weather conditions.

- 9.1.5 The CMAR has included a specified number of days of weather related delays within the CPM Schedule which COUNTY has approved, and that number of days is incorporated herein by reference. If the Project experiences weather-related delays beyond the contractually specified number of weather days, the CMAR is entitled to a commensurate extension of time.
- 9.1.6 CMAR is entitled to an appropriate adjustment of its GMP for extended Construction General Conditions only for mutually determined delays directly caused by the actions, omissions, or inactions of the COUNTY and upon proof of the actual, direct additional cost to the CMAR for such delays.
- 9.1.7 CMAR will provide notice of any delay in performance of the Work that CMAR attributes to COUNTY in writing to the DP and COUNTY immediately but in no event later than twenty-four (24) hours after discovery of the event giving rise to the delay. The CMAR will then provide additional details concerning the delay in writing to the DP and COUNTY within seven (7) calendar days from the delay notice. Failure to satisfy each of these time requirements will absolutely bar any and all later delay claims. The detailed notice will indicate the cause of the delay, the anticipated length of the delay in reasonable detail, the probable effect of such delay upon the progress and Cost of the Work, and possible mitigation plans. If the cause of the delay is ongoing, the CMAR must give further detailed notice every month at the same time it submits the updated progress Narrative Report to COUNTY.
- 9.1.8 CMAR will, upon discovering an event giving rise to a delay, as promptly as possible, make all reasonable efforts to mitigate the impact of the delay.
- 9.1.9 Within fifteen (15) calendar days after elimination of any such delay, the CMAR will, unless the time is extended in a Change Order approved by COUNTY, submit further documentation concerning the delay and, if appropriate, a formal written request requesting an extension of time for such delay and any compensation sought for the delay. The written request for time extension will state the cause of the delay, the number of days of extension requested and the compensation sought and provide a fully documented analysis of the Progress Schedule, including any data demonstrating a delay in the critical path of the Work or individual milestone or the overall Project completion. If the CMAR does not timely comply with the notice and documentation requirements set forth in this Section 9.1.9, the CMAR's claim for delay is barred.
- 9.1.10 In the event the CMAR gives notice to COUNTY of compensable delay alleging that COUNTY is responsible for the delay as to which the notice was given and the delay is unreasonable under the circumstances and was not within the contemplation of COUNTY and CMAR when they entered into the Contract, COUNTY will enter into negotiations with CMAR as to CMAR's damages, if any.



**ARTICLE 10 – CHANGES TO THE CONTRACT PRICE AND TIME**

**10.1 CHANGES**

- 10.1.1 After the Contract is signed, modifications to the Contract, including any changes to GMP, the Contract Time(s) or Scope of Work, may only be made by a written Contract Amendment or written Change Order.
- 10.1.2 The CMAR will not proceed with the Work on any change involving an increase or decrease in cost or time without prior approval of the Change Order or Contract Amendment by the Board of Supervisors or the Procurement Director, as required by Section 11.16.010(C) of the Pima County Procurement Code. If the CMAR proceeds with any change involving an increase or decrease in cost or time without written authorization from COUNTY as required by this paragraph, the CMAR hereby waives all rights or claims CMAR may have in connection with or as a result of the change.
- 10.1.3 COUNTY's right to make changes in the Work will not invalidate this Contract, relieve the CMAR of any responsibility, or require the COUNTY to give notice to the Surety. Any requirement of notice to the Surety of a change in the Work is the sole responsibility of CMAR.
- 10.1.4 A Contract Amendment or Change Order is a written instrument issued after execution of the Contract signed by COUNTY and CMAR, stating their agreement upon all of the following:
- a) The scope of the change in the Work;
  - b) The amount of the adjustment, if any, to the GMP; and
  - c) The extent of the adjustment, if any, to the Contract Time(s) for performance set forth in the Contract Documents.
- 10.1.5 All changes in the Work authorized by an Contract Amendment or Change Order will be performed under the applicable terms of the Contract Documents, and COUNTY, and CMAR will negotiate in good faith and as expeditiously as possible on the appropriate adjustments, if any, in Contract Time or GMP. No GMP adjustment on account of a Change Order will include the CMAR's or Subcontractor's profit, fee, home office overhead, or a formula allocation of indirect costs except as allowed in Section 10.3.1 below unless otherwise specifically allowed under these General Conditions.

**10.2 MINOR CHANGES IN THE WORK**

- 10.2.1 DP may make minor changes in the Work consistent with the intent of the Contract Documents providing such changes do not involve an adjustment in the GMP or Contract Time(s) of performance and do not materially affect or alter the design, quality, or performance. The DP will promptly inform COUNTY, in writing, of any such changes, and verify that CMAR has recorded such changes on the As-Built Documents.

**10.3 PRICE, TIME, OR SCOPE OF WORK ADJUSTMENT**

- 10.3.1 The cost of or credit to COUNTY resulting from a change in the Work will be determined in one or more of the following ways:
- a) By unit prices stated in the Contract Documents;
  - b) By cost, as defined below, and described in Exhibit C, properly itemized and supported by sufficient data reduced to meaningful unit prices for each assembled component of the Work in order to facilitate evaluation. Such costs will be itemized by crafts as defined within the Schedule of Values, submitted in a format approved by COUNTY, and limited to items directly allocable to the change in the Work:

- 1) Cost of materials, including delivery;
- 2) Cost of labor, fully-burdened, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by contract or routinely paid by CMAR, and workers' compensation insurance but excluding Subcontractor's labor;
- 3) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, CMAR must prove reasonable rental rate pursuant to actual ownership costs. County will not pay for equipment idle time unless the equipment is engaged in County-authorized force account or other time and materials work, and then only for the time it is engaged in such work. When the authorized force account or time and materials work is completed or the equipment ceases to be used for that work, payment for idle time stops;
- 4) As a guideline, on a not-to-exceed ("NTE") percentage of Direct Construction Cost only basis, the following overhead, general conditions and fee percentages will be utilized, and will be fixed as a dollar amount, unless otherwise established in the Contract, or otherwise mutually agreed upon and documented in the Change Order description:

Subcontractor Fee (profit):	5%
Subcontractor Overhead & General Conditions, NTE:	<u>10%</u>
Total Subcontractor Markups, NTE:	15%
CMAR Fee (profit), approximately or as per CMAR Contract:	5%
CMAR Overhead & General Conditions, NTE or as per CMAR Contract:	<u>5%</u>
Total CMAR Markups, NTE:	10%

- 5) The Contract may include provisions for some situations where larger amounts of Overhead and General Conditions are needed to address extenuating site-related circumstances. However, the combined total fee, Profit, Overhead and General Conditions, including the CMAR and all levels or tiers of subcontractors, will not exceed twenty-five percent (25%) of the total direct costs of materials, labor, rental equipment, and subcontractor insurance and bonds.
- c. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum will not exceed that amount calculated under (b) above.
- 10.3.2 Any dispute regarding the pricing methodology or cost of a change does not relieve the CMAR of the obligation to proceed with work on the change. Any such dispute will be preserved by inclusion in the Change Order or Contract Amendment.
  - 10.3.3 A COUNTY-approved written Contract Amendment or Change Order is full and final settlement of all entitlement claims for direct, indirect, delay, disruption, inefficiency, productivity, and any other consequential costs related to items covered or affected, as well as for related delays. CMAR irrevocably waives any such claim not presented for inclusion in the Contract Amendment or Change Order prior to signature.
  - 10.3.4 In the event that COUNTY and the CMAR disagree upon whether CMAR is entitled to be paid for any Change Order services required of CMAR by COUNTY, or as to amount of compensation in

the event of any other disagreement over the Scope of Work or proposed changes to the Work, COUNTY and CMAR will resolve all such disagreements consistent initially with Article 10 of these General Conditions and thereafter if not resolved, in accordance with the Dispute Resolution provisions of the Contract. As part of the negotiation process, CMAR will furnish COUNTY and DP with a good faith estimate of the costs to perform the disputed services or Work in accordance with COUNTY's interpretations. If the parties are unable to agree, and COUNTY expects CMAR to promptly perform the services in accordance with COUNTY's or DP's interpretations of the documents, CMAR will proceed to perform the disputed services, conditioned upon COUNTY issuing a written order to CMAR directing CMAR to proceed and specifying COUNTY's or DP's interpretation of the services that are to be performed.

- 10.3.5 The requirements set forth above as to CMAR providing detailed, itemized pricing on subcontractor Change Orders is fully applicable to Change Orders from CMAR to subcontractor where there is no comparable Change Order between COUNTY and CMAR.

#### **10.4 EMERGENCIES**

In any emergency affecting the safety of persons or property, CMAR will promptly act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or Contract Time(s) of performance or both claimed by CMAR on account of emergency work will be determined as provided in this Article.

### **ARTICLE 11 – STOP WORK AND TERMINATION**

#### **11.1 COUNTY'S RIGHT TO STOP WORK OR TERMINATE FOR CONVENIENCE**

- 11.1.1 COUNTY at any time may, without cause and for its convenience, order CMAR in writing to stop or suspend the Work, for a period not to exceed sixty (60) calendar days. In that event, CMAR may seek an adjustment of the GMP or Contract Time(s) of performance or both under Article 10 of the General Conditions to the extent that its Work has been adversely impacted by any such suspension or stoppage of the Work by COUNTY, unless actions, omissions or inactions of the CMAR are the cause of the COUNTY stopping or suspending the Work.
- 11.1.2 Upon seven (7) days written notice to CMAR, COUNTY may, without cause and without prejudice to any other right or remedy of COUNTY, elect to terminate the Contract for convenience of the COUNTY. In such case CMAR will be paid (without duplication of any items): a) for completed and accepted Work executed in accordance with Contract Documents prior to the effective date of the termination, including fair and reasonable sums for overhead and profit on such Work; b) for expenses sustained prior to termination in performing services and furnishing labor, materials, and equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; c) for all claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and d) for reasonable expenses directly attributable to termination.
- 11.1.3 Upon receiving a Notice of Termination for Convenience, the CMAR will proceed as follows: a) stop Work as specified in the Notice; b) place no further subcontracts on purchase orders; c) terminate all subcontracts to the extent they relate to the Work terminated; d) assign to COUNTY all rights of the CMAR under terminated subcontracts, in which case COUNTY has the right to settle or to pay any termination settlement proposal arising out of these terminations; and e) submit complete termination inventory schedules to COUNTY no later than one hundred twenty (120) days from date of the Notice of Termination.

#### **11.2 COUNTY'S RIGHT TO TERMINATE FOR DEFAULT AND PERFORM**

- 11.2.1 If CMAR persistently fails to (a) provide a sufficient number of skilled workers, the materials required by the Construction Documents, or both; (b) comply with applicable legal requirements;

(c) pay, without cause, its Subcontractors or suppliers; (d) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s) as may be from time to time adjusted; (e) maintain contractor, business, or other required licenses or authority; (f) otherwise perform the Work and its obligations in compliance with the Contract Documents; or (g) if, for any reason, CMAR curtails or ceases business or business operations to a degree that would substantially impair or preclude CMAR's performance of this Contract, COUNTY has the right, in addition to any other rights and remedies provided in the Contract Documents or by law, after seven (7) days' written notice of default to CMAR and its surety and CMAR's (or its surety's) failure to cure within that seven day period, to (i) perform and furnish through itself or through others it selects any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to CMAR under the Contract Documents; or (ii) terminate the Contract with CMAR for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which CMAR hereby transfers, assigns, and sets over to COUNTY for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment, and other items; or (iii) both (i) and (ii) above. Upon exercising its right to Terminate for Default for any reason set forth above, COUNTY, at its discretion, may also exercise the right to have each or any of CMAR's subcontractor and supply contracts assigned to COUNTY, or COUNTY's nominee, provided however, COUNTY will have no responsibility or liability for acts or omission of CMAR under such Contracts and the sole recourse of subcontractors on pre-termination events will be against CMAR. CMAR will ensure that a clause providing for this conditional assignment on the foregoing terms is included in each subcontract.

11.2.2 In the event of such termination for default:

11.2.2.1 CMAR is not entitled to recover any further payment until the Work is completed and will then only be entitled to be paid for all acceptable Work performed prior to its date of default minus costs incurred by COUNTY to complete the Project exceeding the GMP as described below. In the event COUNTY's cost and expense of completing CMAR's Work exceeds the GMP, then CMAR or its surety will promptly pay the difference to COUNTY. Such costs and expense will include not only the cost of completing the Work to the satisfaction of COUNTY and of performing and furnishing all labor, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expense, including consultant and attorney's fees and expenses incurred in connection with any additional procurement and the defending of claims, if any, arising from or related to CMAR's default.

11.2.2.2 All finished and unfinished As-Builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports, and other information in whatever form, including electronic, acquired, or prepared by CMAR for this project become COUNTY's property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination.

11.2.2.3 COUNTY may withhold payments to CMAR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CMAR is determined

11.2.3 In the event that COUNTY terminates the Contract for default and such termination is ultimately determined to be improper or wrongful, the termination for default will be automatically converted to a termination for convenience and the provisions of 11.1 of these General Conditions will apply.

11.2.4 If CMAR institutes or has instituted against it a proceeding under the United States Bankruptcy Code, such event is a default that may impair or frustrate CMAR's performance of its obligations under the Contract Documents. Accordingly, if such event of default occurs, COUNTY is entitled to request CMAR, its trustee, or other successor, to provide adequate assurance of future

performance. If CMAR or CMAR's trustee, or other successor fails to comply with such request within ten (10) days after receiving notice of the request, COUNTY, in addition to any other rights and remedies provided by the Contract Documents, or by law, is entitled to terminate the Contract. COUNTY will thereupon be entitled to perform and furnish through itself or through others any such labor, materials, or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s) of performance, and to deduct the costs from any monies due or to become due CMAR under the Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of any such bankruptcy proceedings, the Contract will terminate if CMAR rejects the Contract or if there has been a default under the Contract Documents, and CMAR is unable to give adequate assurances that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming the Contract under the applicable provisions of the Bankruptcy Code.

### **11.3 CMAR'S RIGHT TO STOP WORK AND TERMINATE FOR CAUSE**

11.3.1 CMAR may, in addition to any other rights afforded it under the Contract Documents or by applicable law, either stop Work or terminate the Contract for cause upon COUNTY's failure to timely pay an amount in excess of one hundred thousand dollars (\$100,000.00) properly due to CMAR under any CMAR Application for Payment. In this regard CMAR will provide COUNTY with written notice indicating that such non-payment condition has occurred, and that it is CMAR's intention to stop Work or terminate the Contract only if the non-payment condition is not cured within seven (7) days from COUNTY's receipt of CMAR's notice. In the event that CMAR elects to only stop Work, it may nonetheless later indicate its intention to terminate the Contract by providing COUNTY with written notice that CMAR will terminate the Contract within seven (7) days from receipt of CMAR's notice; unless the alleged cause of termination is cured in the interim.

11.3.2 In the event CMAR properly and lawfully elects to stop Work under section 11.3.1 for non-payment and then resumes Work, CMAR will be entitled to make a claim for adjustment to the GMP and Contract Time(s) of performance to the extent CMAR has been adversely impacted by the stoppage of Work. In the event that CMAR elects to terminate the Contract on the basis permitted under Section 11.3.1, CMAR will be entitled to recover the same costs it would be permitted to recover had COUNTY terminated this Contract for convenience under Section 11.1 of these General Conditions.

11.4 If the Contract is terminated for any of the reasons set forth above, CMAR's contracts with its subcontractors and suppliers, at COUNTY's option and without further action by CMAR, will be assigned to COUNTY; provided however, that COUNTY will have no liability for any pre-existing acts or omissions or default by CMAR under such contracts and the sole recourse of such subcontractors and suppliers for any such events will be against CMAR.

**End of Appendix "C" – General Conditions**



701 N. Cooper Rd. Gilbert AZ 85233  
PH: 480.892.0521 FX: 480.892.4932

6930 N. Camino Martin, Tucson AZ 85741  
[www.huntercontracting.com](http://www.huntercontracting.com)

November 16, 2021

Keith E. Rogers, CPPB, Procurement Officer  
Design & Construction Division  
Pima County Procurement Department  
130 W Congress, 3<sup>rd</sup> Floor  
Tucson, AZ 85701

Re: Solicitation No. SFQ-PO-2200001 (Tucson Blvd Diversion Structure Rehabilitation)  
CMAR Services

Sub: Preconstruction Services Proposal

Dear Mr. Rogers,

In accordance with Solicitation SFQ-PO-2200001 we are pleased to submit for your approval our cost proposal for preconstruction phase services.

Attached are the following exhibits detailing the services provided:

- Attachment A - Summary of Tasks
- Attachment B - Hourly Rate Schedule for Hunter Contracting Co.
- Attachment C - Anticipated Schedule
- Attachment D - Subconsultant Cost Estimates

Should you have any questions or comments regarding the proposed services feel free to contact me at [bobc@huntercontracting.com](mailto:bobc@huntercontracting.com) or Brian Janski at (520) 306-0684 or [brian.janski@huntercontracting.com](mailto:brian.janski@huntercontracting.com).

Regards,

A handwritten signature in black ink, appearing to read "Bob Carlson".

Bob Carlson, Vice President

Attachments

## Attachment A – Summary of Tasks



Date: 11/16/2021

Project: Tucson Blvd Diversion Structure Rehabilitation  
 Project #: 3TDS20

1 Design Phase Services	Project Manager	Project Sponsor	Senior Estimator	Operations Manager	Project Engineer	Project Superintendent	Project Administrator	TOTAL
<b>1.1 General Services</b>								
1.1.1 Preconstruction Services	8.00	0.00	8.00	4.00	0.00	0.00	0.00	20.00
1.1.2 Site Visits	8.00	0.00	8.00	4.00	8.00	4.00	0.00	32.00
1.1.3 Sewer / Bypass Route Research	20.00	10.00	20.00	0.00	20.00	20.00	0.00	90.00
Subtotals	36.00	10.00	36.00	8.00	28.00	24.00	0.00	142.00
	\$3,832.04	\$1,364.80	\$3,832.04	\$787.92	\$2,498.72	\$2,065.20	\$0.00	\$13,980.72
<b>1.2 Meetings</b>								
1.2.1 Progress Meetings (8 mtgs x 2 hrs/ea)	12.00	12.00	8.00	0.00	6.00	8.00	0.00	42.00
1.2.2 Weekly Phone Call Meetings (12 weeks x 0.5 hrs/ea)	8.00	8.00	4.00	4.00	0.00	0.00	0.00	24.00
1.2.3 Design Submittal Meetings (2 mtgs x 2 hrs/ea)	4.00	4.00	4.00	0.00	0.00	0.00	0.00	12.00
1.2.4 Value Engineering Review (1 mtgs x 2 hrs/ea)	2.00	2.00	2.00	1.00	1.00	1.00	0.00	9.00
1.2.5 Technical Issues Meeting (3 mtgs x 2hrs/ea)	2.00	2.00	0.00	1.00	0.00	1.00	0.00	6.00
1.2.6 Public / Community Meeting (2 mtg x 1.5 hrs/ea)	3.00	0.00	0.00	3.00	3.00	0.00	0.00	9.00
1.2.7 GMP Review Meeting (1 mtg x 4 hrs/ea)	4.00	4.00	4.00	4.00	0.00	2.00	0.00	18.00
Subtotals	35.00	32.00	20.00	13.00	10.00	10.00	0.00	120.00
	\$3,531.15	\$4,367.35	\$2,017.80	\$1,280.37	\$892.40	\$860.50	\$0.00	\$12,949.58
<b>1.3 Written Plans</b>								
1.3.1 Quality Control Plan	5.00	0.00	0.00	0.00	10.00	0.00	2.50	17.50
1.3.2 Site Specific Safety Plan	5.00	0.00	0.00	5.00	10.00	5.00	2.50	27.50
1.3.3 Work Plan	5.00	0.00	0.00	5.00	10.00	5.00	0.00	25.00
Subtotals	15.00	0.00	0.00	10.00	30.00	10.00	5.00	70.00
	\$1,513.35	\$0.00	\$0.00	\$984.90	\$2,677.20	\$860.50	\$217.40	\$6,253.35
<b>1.4 Project Schedule</b>								
1.4.1 Project Schedule	6.00	3.00	0.00	6.00	6.00	0.00	0.00	21.00
Subtotals	6.00	3.00	0.00	6.00	6.00	0.00	0.00	36.00
	\$605.34	\$409.44	\$0.00	\$590.94	\$535.44	\$0.00	\$0.00	\$2,141.16
<b>1.5 Design Review &amp; Comments</b>								
1.5.1 Project Design Constructability Review (30%/60%/90%)	8.00	4.00	4.00	4.00	4.00	4.00	0.00	28.00
Subtotals	8.00	4.00	4.00	4.00	4.00	4.00	0.00	28.00
	\$807.12	\$545.92	\$403.56	\$393.95	\$355.95	\$344.20	\$0.00	\$2,851.72
<b>1.6 Cost Estimates</b>								
1.6.1 Cost Estimating (80%/90%/100%)	10.00	2.00	20.00	10.00	10.00	10.00	0.00	62.00
Subtotals	10.00	2.00	20.00	10.00	10.00	10.00	0.00	62.00
	\$1,008.90	\$272.95	\$2,017.80	\$984.90	\$892.40	\$860.50	\$0.00	\$6,037.46
<b>1.7 Guaranteed Maximum Price (GMP) Proposals</b>								
1.7.1 GMP Proposal Development & Submittal	6.00	3.00	6.00	6.00	3.00	0.00	3.00	27.00
Subtotals	6.00	3.00	6.00	6.00	3.00	0.00	3.00	19.00
	\$605.34	\$409.44	\$605.34	\$590.94	\$267.72	\$0.00	\$130.44	\$2,609.22
<b>1.8 Major Subcontractor &amp; Major Supplier Selection</b>								
1.8.1 Subcontractor Selection Plan	3.00	0.00	6.00	0.00	3.00	0.00	3.00	15.00
1.8.2 Prebid meeting / interviews / scope clarifications	4.00	0.00	8.00	0.00	4.00	0.00	4.00	20.00
Subtotals	7.00	0.00	14.00	0.00	7.00	0.00	7.00	35.00
	\$705.23	\$0.00	\$1,412.45	\$0.00	\$624.68	\$0.00	\$304.35	\$3,047.73
<b>1.9 Subcontractor Administration</b>								
1.9.1 Contract Execution	1.00	0.00	0.00	0.00	2.00	0.00	2.00	5.00
1.9.2 Invoice Reviewal and Approval	1.00	0.00	0.00	0.00	2.00	0.00	2.00	5.00
Subtotals	2.00	0.00	0.00	0.00	4.00	0.00	4.00	10.00



	\$201.78	\$0.00	\$0.00	\$0.00	\$356.96	\$0.00	\$173.92	\$732.66
<b>Summary</b>								
Total Project Hours	125.00	54.00	100.00	57.00	102.00	58.00	19.00	652.50
Hourly Rate	\$100.89	\$136.48	\$100.89	\$98.49	\$89.24	\$88.05	\$43.48	
Total Cost	\$12,611.25	\$7,369.92	\$10,089.00	\$5,613.93	\$9,102.48	\$4,990.90	\$826.12	\$50,803.60
						Overhead (5.32%)		\$3,198.15
						Profit (7.00%)		\$3,768.12
						Subtotal for Design Services		\$57,667.87
<b>2 Utility Potholing</b>								
2.1 Potholing - Sub (12 @ 2.25 HRS/Pothole)(\$219.00/HR)								\$5,913.00
2.2 Permit Allowance								\$750.00
2.3 Traffic Control Allowance								\$1,500.00
Subtotal								\$8,163.00
<b>3 Subcontractors</b>								
3.1 Community Relations								
3.1.1 Kaneen Communications								\$16,795.00
3.2 Smart Cover/H2S Sensors								
3.2.1 JCH, Inc. (Smart Covers and H2S Sensors)								\$32,208.00
3.2.2 Dana Kepner (Composite Covers)								\$11,783.42
3.2.3 Materials Tax (8.8%)								\$3,783.26
Subtotal								\$66,569.68
						Total Cost		\$74,732.68
						Profit (5.00%)		\$3,736.63
						Subtotal for Subcontracted Services		\$78,469.31
						Grand Total:		\$136,037.18

Attachment B – Hourly Rate Schedule for Hunter Contracting Co.

**Hunter Contracting Hourly Rate Summary - Pre-Construction Phase**

Date: 11/16/2021

CMAR Services - Tucson Blvd. Diversion Structure Rehabilitation (3TDS20)

**Hunter Contracting, Co.**

701 N Cooper Rd., Gilbert, AZ 85233

Office: 480-503-7438 / Fax: 480-8924932

PROJECT: CMAR Services - Tucson Blvd. Diversion Structure Rehabilitation (3TDS20)

Hunter Contracting, Co. Job No.: 21444-00

Man Hour Rate Schedule - Position Description	Base (\$/Hr)	PR Tax + Fringes (%)	Labor Total (\$/Hr)	Equip. (\$/Hr)	L+E (\$/Hr)	Total Calc. Rate w/o Fee (\$/Hr)	Total Rate (\$/Hr)
PS - Project Sponsor (Brian Janski)	\$76.92	48%	\$113.84	\$22.64	\$136.48	\$136.48	\$136.48
PM - Project Manager (Guillermo Aguirre)	\$52.87	48%	\$78.25	\$22.64	\$100.89	\$100.89	\$100.89
PE - Project Engineer (Stephen Kelley)	\$45.00	48%	\$66.60	\$22.64	\$89.24	\$89.24	\$89.24
PS - Project Superintendent (Martin Nava)	\$42.50	48%	\$62.90	\$23.15	\$86.05	\$86.05	\$86.05
OM - Operations Manager (Noah Dayton)	\$51.25	48%	\$75.85	\$22.64	\$98.49	\$98.49	\$98.49
SE - Senior Estimator (Jesse Grinsteiner)	\$52.87	48%	\$78.25	\$22.64	\$100.89	\$100.89	\$100.89
PA- Project Administrator (Claudia Campos)	\$26.00	48%	\$38.48	\$5.00	\$43.48	\$43.48	\$43.48

**Attachment C – Anticipated Schedule**



**Attachment D – Subconsultant Cost Estimates**



**Hunter Contracting**  
 PC RWRD - Tucson Boulevard Diversion Structure Rehabilitation  
 Assumes 8 Month Project

**ESTIMATE OF MANHOURS**

11/9/2021

Task	Project Principal/Manager	Designer/Artist	Public Relations Coordinator	Clerical	Total Hours	Total Labor Costs	Direct Expenses	Total Costs
	\$150	\$100	\$100	\$50				\$ 18,795.00
1. Project Team Meetings - Assumes attendance/participation at 6 design meetings and 20 construction meetings (1.5 - 2 hrs per meeting).	25	0	3	1	29	\$4,100	\$ 5.00	\$ 4,105.00
2. Stakeholder/Neighborhood Outreach - Assumes coordination and communication with neighborhood residents, stakeholders, recreational groups. Includes development of project area contact database.	18	0	8	8	34	\$3,900	\$ -	\$ 3,900.00
3. Outreach Materials - Assumes creation and design of public outreach materials that may include flyers/fact sheets, maps, informational pieces, door hangers, mailer, etc.	12	8	2	4	26	\$3,000	\$ 875.00	\$ 3,875.00
4. TSM Meeting - Assumes 1	4	2	1	2	9	\$1,000	\$ 25.00	\$ 1,025.00
5. Traffic Alerts - Assumes 4	6	2	0	2	10	\$1,200	\$ 5.00	\$ 1,205.00
6. Website - Assumes information coordination with Webmaster for posting project updates to website (2 updates per month).	4	0	0	2	6	\$700	\$ 500.00	\$ 1,200.00
7. Project Information Line - Respond to inquiries via project information line.	8	0	0	2	10	\$1,300	\$ 80.00	\$ 1,380.00
5. Project Management-Assumes coordination and communications with client as needed and internal project review.	12	0	2	2	16	\$2,100	\$ 5.00	\$ 2,105.00
	89	12	16	23	140	\$17,300	\$ 1,495.00	\$ 18,795.00

QUOTATION #: 20200528-393DLP

Page 1 of 1

DATE: November 15, 2021

TO: Hunter Contracting

Job Name: Smartcover Quote

ATTN: Guillermo Aguirre

Location: Tucson, AZ  
 Quoted By: DOUGLAS PRATT, PE  
 Bid Date: N/A

Unless otherwise stated: Prices are firm for 30 days from bid date, payment terms are NET 30 DAYS from shipment. Prices do not include any sales and/or use taxes. Applicable taxes will be added to the invoice at the rate in effect at the time of shipment. Interest shall accrue on past due amounts of 1.5% per month. Freight terms are F.O.B. factory, full freight allowed.

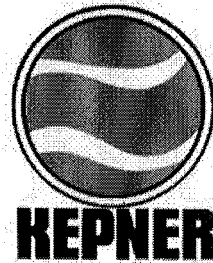
QTY	Description	Each	Total
<b>MANUFACTURER: SMARTCOVER</b>			
3	Smartcover Level System Includes: Standard Range DSM, E-box, PowerPack, Bracket, Antenna and installation kit.	\$4,126.00	\$12,378.00
<del>2</del>	<del>Active Site Management: Smart-level system – 1 year</del>	<del>\$377.00</del>	<del>\$754.00</del>
3	Active Site Management: Smart-Floe System – 1 year	\$615.00	\$1,845.00
3	Smartcover H2S System Includes: H2S sensor, E-box, Powerpack, bracket, antenna and installation kit	\$4,126.00	\$12,378.00
3	Active Site Management: H2S system – 1 year	\$377.00	\$1,131.00
3	H2S Sensor Replacement Program	\$1,492.00	\$4,476.00
TOTAL PRICE		FREIGHT INCLUDED	\$32,208.00
		FOB FACTORY	

NOTES:

1. Sales tax not included. If sales tax is required, please add 8.6%.
2. All rates are based on Master Agreement 1900000000000000098 with Pima County.
3. All units are assumed to become property of Pima County. If units are not going to Pima County, additional charges will apply.

*Thank you for the opportunity to quote the above equipment.  
 If anything is missing, please notify me immediately.*





**PIMA COUNTY JOC**  
**COMPOSITE MANHOLE ASSY**

**Bid Date:** 11/16/2021 -

**Project Location:** TUCSON

PLEASE BE AWARE! THE PROPOSED CHINA TARIFF (SECTION 301, LIST 3) MAY AFFECT PRODUCTS OFFERED IN THIS QUOTATION. IF THE TARIFF IS IMPLEMENTED, THE ACTUAL INCREASE IN PRICING WILL BE PASSED ON.

**Quote:** RM111621A

**TakeOff Name:** CUSTOMER LIST

**Customer:** HUNTER CONTRACTING-TUCSON

**Sales Rep:** Rick Martinez

**Phone:** 520.269.1343

**eMail:** rmartinez@danakepner.com

---

**Tucson**

1185 West Glenn

Tucson, AZ 85705

Standard Hours: 6:00a to 4:00p Monday through Friday

Phone: 520.624.7180

On Call: 520.631.1179

## Quote Summary

New Section	New Subsection	\$11,783.42
	<b>New Section Total:</b>	<b>\$11,783.42</b>
<b>Total Quote before Taxes:</b>		<b>\$11,783.42</b>

# New Section

## New Subsection

Qty	Unit	Description	Price	Total Price
1	6.0 EA	COM3200 DUROSTREET 5" TALL COMPOSITE MH ASSY	\$1,731.64	\$10,389.84
2	6.0 EA	SENCOR MOUNTING PLATE	\$136.43	\$818.58
3	1.0 EA	FREIGHT CHARGE	\$575.00	\$575.00
				<b>\$11,783.42</b>

Total Units: 1.0

Average Cost per Each: \$11,783.42



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage.....	3
2. Unintentional Failure To Disclose Hazards.....	9
3. Damage To Premises Rented To You.....	9
4. Supplementary Payments.....	10
5. Medical Payments.....	10
6. 180 Day Coverage For Newly Formed Or Acquired Organizations.....	10
7. Waiver Of Subrogation.....	11
8. Automatic Additional Insured - Specified Relationships:.....	11
• Managers Or Lessors Of Premises;	
• Lessor Of Leased Equipment;	
• Vendors;	
• State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises; and	
• Mortgagee, Assignee Or Receiver	
9. Property Damage To Borrowed Equipment.....	14
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11. Broadened Notice Of Occurrence.....	15
12. Nonowned Aircraft.....	15
13. Bodily Injury Redefined.....	15
14. Expected Or Intended Injury Redefined.....	15
15. Former Employees As Insureds.....	15
16. Voluntary Property Damage Coverage And Care, Custody Or Control Liability Coverage.....	16
17. Broadened Contractual Liability - Work Within 50' Of Railroad Property.....	17
18. Alienated Premises.....	17

#### B. Limits Of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$1,000,000  
Aggregate Limit: \$3,000,000  
Deductible Amount: \$ 1,000

##### 3. Damage To Premises Rented To You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- Bail Bonds: \$2,500

b. Loss Of Earnings: \$ 500

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**9. Property Damage To Borrowed Equipment**

Each Occurrence Limit: \$10,000

Deductible Amount: \$ 250

**16. Voluntary Property Damage Coverage (Coverage a.) And Care, Custody Or Control Liability Coverage (Coverage b.)**

**Limits Of Insurance**

Coverage a.

\$1,000 Each Occurrence

\$5,000 Aggregate

Coverage b. \$5,000 Each Occurrence unless otherwise stated \$ \_\_\_\_\_

**Deductible Amount (Each Occurrence)**

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE (For Limits in Excess of \$5,000)	ADVANCE PREMIUM
			(For Limits in Excess of \$5,000)
b. Care, Custody Or Control			\$
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

C. Coverages

1. Employee Benefit Liability Coverage

- a. The following is added to **Section I - Coverages**:

**Employee Benefit Liability Coverage**

**(1) Insuring Agreement**

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **Section III - Limits Of Insurance**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments**.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
  - 1) Occurs during the policy period; or
  - 2) Occurred prior to the "first effective date" of

this endorsement provided:

- a) You did not have knowledge of a claim or "suit" on or before the "first effective date" of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

**(2) Exclusions**

This insurance does not apply to:

- (a) **Bodily Injury, Property Damage Or Personal And Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

- (b) **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- (c) **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation And Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment - related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**Section I - Coverages, Supplementary Payments - Coverages A And B** also apply to this Coverage.

**b. Who Is An Insured**

As respects **Employee Benefit Liability Coverage, Section II - Who Is An Insured** is replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your part-



ners, and their spouses are also insureds but only with respect to the conduct of your business.

- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program";
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed; or
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organi-

zation. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits Of Insurance

As respects **Employee Benefit Liability Coverage, Section III - Limits Of Insurance** is replaced by the following:

- (1) The Limits of Insurance shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
  - (a) An act, error or omission; or

- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions;

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

- (b) The Deductible Amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

- (c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and

- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim;

apply irrespective of the application of the Deductible Amount.

- (d) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon no-

tification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, Section IV - Commercial General Liability Conditions** is amended as follows:

- (1) Item **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** is replaced by the following:

**2. Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and

- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers re-

ceived in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) Item 5. **Other Insurance** is replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method Of Sharing**

If all of the other insurance permits contribu-

tion by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, Section V - Definitions** is amended as follows:

(1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in

any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

4. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.

(2) The following definitions are deleted in their entirety and replaced by the following:

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

**2. Unintentional Failure To Disclose Hazards**

**Section IV - Commercial General Liability Conditions, 7. Representations** is amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Damage To Premises Rented To You**

a. The last Paragraph of **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions **c.** through **q.** do not apply to "property damage" by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the **Damage To Premises Rented To You** Limit as described in **Section III - Limits Of Insurance.**

b. The insurance provided under **Section I - Coverage A - Bodily Injury And Property Damage Liability** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

(1) As respects Water Damage Legal Liability, as provided in Paragraph **3.b.** above:

The exclusions under **Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions**, other than **i. War** and the **Nuclear Energy Liability Exclusion (Broad Form)**, are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":
- (i) Assumed in any contract or agreement; or
  - (ii) Caused by or resulting from any of the following:
    - 1) Wear and tear;

2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

3) Smog;

4) Mechanical breakdown, including rupture or bursting caused by centrifugal force;

5) Settling, cracking, shrinking or expansion;

6) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals; or

7) Presence, growth, proliferation, spread or any activity of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

(b) "Property damage" caused directly or indirectly by any of the following:

(i) Earthquake, volcanic eruption, landslide or any other earth movement;

(ii) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

(iii) Water under the ground surface pressing on, or flowing or seeping through:

1) Foundations, walls, floors or paved surfaces;

- 2) Basements, whether paved or not; or
  - 3) Doors, windows or other openings.
- (c) "Property damage" caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, fire protection systems, or other equipment, caused by or resulting from freezing, unless:
- (i) You did your best to maintain heat in the building or structure; or
  - (ii) You drained the equipment and shut off the water supply if the heat was not maintained.
- (d) "Property damage" to:
- (i) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
  - (ii) The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit Of Insurance**

With respect to the insurance afforded in Paragraphs 3.a. and 3.b. above, the **Damage To Premises Rented To You** Limit as shown in the Declarations is amended as follows:

- (1) Paragraph 6. of **Section III - Limits Of Insurance** is replaced by the following:
  - 6. Subject to Paragraph 5. above, the **Damage To Premises Rented To You** Limit is the most we will pay under **Coverage A - Bodily Injury And Property Damage Liability** for damages because of "property damage" to any one premises:
    - a. While rented to you, or temporarily occupied by

you with permission of the owner;

- b. In the case of damage by fire, explosion, lightning, smoke or soot, while rented to you; or
- c. In the case of damage by water, while rented to and occupied by you.

- (2) The most we will pay is limited as described in **Section B. Limits Of Insurance, 3. Damage To Premises Rented To You** of this endorsement.

**4. Supplementary Payments**

Under **Section I - Supplementary Payments - Coverages A And B:**

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in **Section B. Limits Of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in **Section B. Limits Of Insurance, 4.b.** Loss Of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in **Section B. Limits Of Insurance, 5. Medical Payments** of this endorsement.

**6. 180 Day Coverage For Newly Formed Or Acquired Organizations**

**Section II - Who Is An Insured** is amended as follows:

Subparagraph a. of Paragraph 3. is replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after

you acquire or form the organization or the end of the policy period, whichever is earlier;

## 7. Waiver Of Subrogation

**Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract or agreement with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

## 8. Automatic Additional Insured - Specified Relationships

a. The following is added to **Section II - Who Is An Insured**:

(1) Any person(s) or organization(s) described in Paragraph **8.a.(2)** of this endorsement (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract, written agreement, written permit or written authorization.

(2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

### (a) Managers Or Lessors Of Premises

The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to liability arising out of the ownership, maintenance or

use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

(i) Any "occurrence" which takes place after you cease to be a tenant in that premises;

(ii) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

### (b) Lessor Of Leased Equipment

Any person or organization from whom you lease equipment when you and such person(s) or organization(s) have agreed per Paragraph **8.a.(1)** of this endorsement to provide insurance. Such person(s) or organization(s) are insureds only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

### (c) Vendors

Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the

vendor's business, subject to the following additional exclusions:

(i) The insurance afforded the vendor does not apply to:

- 1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- 2) Any express warranty unauthorized by you;
- 3) Any physical or chemical change in the product made intentionally by the vendor;
- 4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- 5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- 6) Demonstration, installation, servicing

or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

7) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

a) The exceptions contained in Paragraphs (c) (i) 4) or 6) of this endorsement; or

b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(ii) This insurance does not apply to any insured person or organization:

1) From whom you have acquired such products, or any ingredient, part



or container, entering into, accompanying or containing such products; or

- 2) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

**(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises**

Any state or governmental agency or subdivision or political subdivision with which you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (i) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, man-holes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
- (ii) The construction, erection or removal of elevators; or
- (iii) The ownership, maintenance or use of any elevators covered by this insurance.

**(e) Mortgagee, Assignee Or Receiver**

Any person or organization with whom you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. However, this insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- (3) The insurance afforded to additional insureds described in Paragraph 8.a.(1) of this endorsement:

(a) Only applies to the extent permitted by law; and

(b) Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and

(c) Does not apply to any person, organization, vendor, state, governmental agency or subdivision or political subdivision, specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part, provided such other provision or endorsement covers the injury or damage for which this insurance applies.

- b. With respect to the insurance afforded to the additional insureds described in Paragraph 8.a.(1) of this endorsement, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- (1) Required by the written contract, written agreement, written permit or written authorization described

in Paragraph 8.a.(1) of this endorsement; or

- (2) Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- c. **Section IV - Commercial General Liability Conditions** is amended to include the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

- (1) During the policy period; and
- (2) Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraph 8.a.(1).

- d. **Section IV - Commercial General Liability Conditions** is amended as follows:

Condition 5. **Other Insurance** is amended to include:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured per Paragraph 8.a.(1) of this endorsement provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract, agreement, permit or authorization described in 8.a.(2) of this endorsement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**9. Property Damage To Borrowed Equipment**

- a. The following is added to **Exclusion 2.j. Damage To Property** under **Sec-**

**tion I - Coverage A - Bodily Injury And Property Damage Liability:**

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in **Section B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in **Section B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bringing "suits".

**(2) Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount stated in **Section B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.

- (b) **Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.

- (c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**10. Employees As Insureds - Specified Health Care Services And Good Samaritan Services**

Paragraph 2.a.(1)(d) under **Section II - Who Is An Insured** does not apply to:

- a. Your "employees" who provide professional health care services on your behalf as a duly licensed nurse, emergency medical technician or paramedic in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place; or
- b. Your "employees" or "volunteer workers", other than an employed or volunteer doctor, providing first aid or good samaritan services during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

**11. Broadened Notice Of Occurrence**

Paragraph a. of Condition 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions** is replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

**12. Nonowned Aircraft**

The following is added to **Exclusion 2.g. Aircraft, Auto Or Watercraft** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This exclusion does not apply to an aircraft you do not own, provided that:

- a. The pilot in command holds a current effective certificate, issued by a duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- b. The aircraft is rented with a trained, paid crew; and
- c. The aircraft does not transport persons or cargo for a charge.

**13. Bodily Injury Redefined**

**Section V - Definitions, 4. "Bodily injury"** is replaced by the following:

- 4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.

**14. Expected Or Intended Injury Redefined**

The last sentence of **Exclusion 2.a. Expected Or Intended Injury** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**15. Former Employees As Insureds**

The following is added to Paragraph 2. under **Section II - Who Is An Insured**:

- 2. Each of the following is also an insured:

Any of your former "employees", directors, managers, members, partners or "executive officers", including but not limited to retired, disabled or those on leave of absence, but only for acts within the scope of their employment by you or for duties related to the conduct of your business.

## 16. Voluntary Property Damage Coverage

### a. Coverage D - Voluntary Property Damage Coverage

**Section I - Coverages** is amended to include the following:

#### (1) Insuring Agreement

- (a) We will pay the cost to repair or replace "property damage" to property of others arising out of operations incidental to your business when:

- 1) Damage is caused by you; or
- 2) Damage occurs while in your possession.

At your written request, we will make this payment regardless of whether you are at fault for the "property damage".

If you, at our request, replace, or make any repairs to, damaged property of others, the amount we will pay under **Voluntary Property Damage Coverage** will be determined by your actual cost to replace or repair the damaged property, excluding any profit or overhead.

Any payment we make under **Voluntary Property Damage Coverage** shall not be interpreted as an admission of liability by you or by us.

It shall be your duty, not our duty, to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

- (b) This insurance applies to "property damage" only if:

- 1) The "property damage" takes place in the "coverage territory"; and
- 2) The "property damage" occurs during the policy period.

#### (2) Exclusions

This insurance does not apply to "property damage" that would be excluded by **Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions**, except for j. **Damage To Property**, paragraphs (3), (4), (5) and (6), k. **Damage To Your Product**, and l. **Damage To Your Work**.

#### (3) Definitions

For purposes of **Voluntary Property Damage Coverage** only, the following definitions under **Section V - Definitions** are replaced by the following:

16. "Occurrence" means an incident, including continuous or repeated exposure to substantially the same general harmful conditions that result in "property damage".

20. "Property damage" means physical injury to tangible property. "Electronic data" is not tangible property, and "property damage" does not include disappearance, abstraction or theft.

### b. Care, Custody Or Control Liability Coverage

For purposes of the coverage provided by **Care, Custody Or Control Liability Coverage** in this endorsement only:

(1) **Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions, j. Damage To Property**, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

(2) It shall be your duty, not our duty, to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

This Paragraph (2) supersedes any provision in the Coverage Part to the contrary.

(3) "Property damage" for which **Care, Custody Or Control Liability Coverage** provides cover-

age shall be deemed to be caused by an "occurrence" but shall not serve to limit or restrict the applicability of any exclusion for "property damage" under this Coverage Part.

**c. Limits Of Insurance And Deductibles**

For purposes of the coverage provided by **Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage, Section III - Limits Of Insurance** is amended to include the following:

(1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in **Section B. Limits Of Insurance, 16. Voluntary Property Damage Coverage And Care, Custody Or Control Liability Coverage**, in this endorsement. These limits are inclusive of, and not in addition to, the limits being replaced. The Limits of Insurance shown in the Schedule fix the most we will pay regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bringing "suits".

(2) (a) Subject to (3) below, the **Voluntary Property Damage Coverage**, Each Occurrence Limit Of Insurance is the most we will pay for the sum of damages under **Voluntary Property Damage Coverage**:

(b) The **Care, Custody Or Control Liability Coverage**, Each Occurrence Limit Of Insurance is the most we will pay for the sum of damages under **Care, Custody Or Control Liability Coverage**;

because of all "property damage" arising out of any one "occurrence".

(3) The **Voluntary Property Damage Coverage**, Aggregate Limit Of Insurance is the most we will pay for the sum of all damages under **Voluntary Property Damage Coverage**. This limit applies separately to each "coverage term".

**(4) Deductible Clause**

(a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount stated for the applicable coverage in the Schedule. The limits of insurance will not be reduced by the application of such Deductible Amount.

(b) **Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as has been paid by us.

**17. Broadened Contractual Liability - Work Within 50' Of Railroad Property**

**Section V - Definitions, 12.** "Insured contract" is amended as follows:

- a. Paragraph c. is replaced by the following:
  - c. Any easement or license agreement;
- b. Paragraph f.(1) is deleted in its entirety.

**18. Alienated Premises**

**Exclusion 2.j. Damage to Property**, Paragraph (2) under **Section I - Coverage A - Bodily Injury And Property Damage Liability** does not apply if the premises are "your work".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS WHEN REQUIRED IN WRITTEN CONTRACT OR AGREEMENT - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You**

1. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed under that written contract or written agreement and included in the "products-completed operations hazard", but only if:

- a. The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and
- b. The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, coverage

does not apply to that person or organization.

2. With respect to the insurance afforded to the additional insureds described in Paragraph A., the following additional exclusions apply:

This insurance does not apply to

a. "Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

b. "Bodily injury" or "property damage" arising out of "residential" construction.

**B.** The insurance afforded to additional insureds described in Paragraph A.:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and

3. Does not apply to any person or organization specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- C. With respect to the insurance afforded to the additional insureds described in Paragraph A., the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract, written agreement, written permit or written authorization described in Paragraph A.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- D. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs:

1. During the policy period; and
2. Subsequent to your execution of the written contract or written agreement described in Paragraph A.

- E. Except when F. below applies, the following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

**When Other Additional Insured Coverage Applies On An Excess Basis**

This insurance is primary to other insurance available to the additional insured described in Paragraph A. except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, 5. Other Insurance, b. Excess Insurance**; or
2. For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, this insurance is also excess.

- F. The following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

**Primary Insurance When Required By Written Contract Or Agreement**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraph A. provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement described in Paragraph A. that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

**Primary And Noncontributory Insurance When Required By Written Contract Or Agreement**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraph A. provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement described in Paragraph A. that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

- G. **Section V - Definitions** is amended to include:

1. "Residential" construction means:
  - a. A structure used, or intended, in whole or in part, for the purpose of human habitation, and includes, but is not limited to, single-family housing, multi-family housing, tract homes, condominiums, cooperatives, townhomes, townhouses, planned-unit developments and timeshares;
  - b. A structure converted, or being converted, in whole or in part, into condominiums or cooperatives; and
  - c. Common areas and grounds, appurtenant structures and facilities, of the structures described in 1.a. and b. above, except a public street, public

road, public right of way, or public utility easement located on or near such common areas and grounds.

"Residential construction" does not include:

- a. "Hospitals, jails or prisons; and
- b. Provided there is no individual ownership of units and that such was not, in whole or in part, at any time, marketed, sold, occupied or used as single-family housing, multi-family housing, or as a condominium, cooperative, townhouse, townhome or timeshare:

- (1) Government housing on military bases;
- (2) College/university dormitories;
- (3) Apartments;
- (4) Long-term care facilities;
- (5) Assisted-living facilities;
- (6) Nursing homes; and
- (7) Hotels or motels.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY -  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CinciPlus®**  
**BUSINESS AUTO XC+®**  
**(EXPANDED COVERAGE PLUS)**  
**ENDORSEMENT**

This endorsement modifies insurance provided by the following:

**BUSINESS AUTO COVERAGE FORM**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

**A. Blanket Waiver of Subrogation**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution or the "insured contract".

**B. Noncontributory Insurance**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance c.** is replaced by the following:

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

**C. Additional Insured by Contract**

**SECTION II - LIABILITY COVERAGE, A. Coverage, I. Who is an Insured** is amended to include as an insured any person or organization with which you have agreed in a valid written contract to provide insurance as is afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been:

1. Executed prior to the accident causing "bodily injury" or "property damage"; and
2. Is still in force at the time of the "accident" causing "bodily injury" or "property damage".

**D. Employee Hired Auto**

**1. Changes in Liability Coverage**

The following is added to the **Section II - Liability Coverage, A. Coverage, 1. Who is an Insured:**

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

**2. Changes in General Conditions**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance** is amended by replacing Paragraph 5.b. with the following:

- b. For Hired Auto Physical Damage Coverage the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**E. Audio, Visual and Data Electronic Equipment**

**SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance** is amended by adding the following:

4. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "accident";
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
  - c. \$2,500.

Provided the equipment, at the time of the "loss" is:

- a. Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above; or
- c. An integral part of such equipment.

**F. Who is an Insured - Amended**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended by adding the following:

The following are "insureds":

1. Any subsidiary which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this coverage form.

However, the insurance afforded by this provision does not apply to any subsidiary that is an "insured" under any other automobile liability policy, or would be an "insured" under such policy but for termination of such policy or the exhaustion of such policy's limits of insurance.

2. Any organization that is newly acquired or formed by you and over which you maintain majority ownership. The insurance provided by this provision:

- a. Is effective on the date of acquisition or formation, and is afforded for 180 days after such date;
  - b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;
  - c. Does not apply to any newly acquired or formed organization that is a joint venture or partnership; and
  - d. Does not apply to an insured under any other automobile liability policy, or would be an insured under such a policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.
3. Any of your "employees" while using a covered "auto" in your business or your personal affairs, provided you do not own, hire or borrow that "auto".

**G. Liability Coverage Extensions - Supplementary Payments - Higher Limits**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments** is amended by:

1. Replacing the \$2,000 Limit of Insurance for bail bonds with \$4,000 in (2); and
2. Replacing the \$250 Limit of Insurance for reasonable expenses with \$500 in (4).

**H. Amended Fellow Employee Exclusion**

**SECTION II - LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee** is modified as follows:

Exclusion 5. Fellow Employee is deleted.

**I. Hired Auto - Physical Damage**

If hired "autos" are covered "autos" for Liability Coverage, then Comprehensive and Collision Physical Damage Coverages as provided under **SECTION III - PHYSICAL DAMAGE COVERAGE** of this Coverage Part are extended to "autos" you hire, subject to the following:

1. The most we will pay for "loss" to any hired "auto" is \$50,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.
2. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage, or \$1,000, whichever is less.
3. Hired Auto - Physical Damage coverage is excess over any other collectible insurance.

4. Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own insured under this policy.

Coverage includes loss of use of that hired auto, provided it results from an "accident" for which you are legally liable and as a result of which a monetary loss is sustained by the leasing or rental concern. The most we will pay for any one "accident" is \$3,000.

If a limit for Hired Auto - Physical Damage is shown in the Schedule, then that limit replaces, and is not added to, the \$50,000 limit indicated above.

#### J. Rental Reimbursement

**SECTION III - PHYSICAL DAMAGE** is amended by adding the following:

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of a "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.
2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
  - a. The number of days reasonably required to repair the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
  - b. 30 days.
3. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred; or
  - b. \$50 per day.
4. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
5. We will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**.

#### K. Transportation Expense - Higher Limits

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by replacing \$20 per day with \$50 per day, and \$600 maximum with \$1,500 maximum in **Extension a. Transportation Expenses**.

#### L. Airbag Coverage

**SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3.a.** is amended by adding the following:

However, the mechanical and electrical breakdown portion of this exclusion does not apply to the accidental discharge of an airbag. This coverage for airbags is excess over any other collectible insurance or warranty.

#### M. Loan or Lease Gap Coverage

1. **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance** is deleted in its entirety and replaced by the following, but only for private passenger type "autos" with an original loan or lease, and only in the event of a "total loss" to such a private passenger type "auto":

- a. The most we will pay for "loss" in any one "accident" is the greater of:
  - (1) The amount due under the terms of the lease or loan to which your covered private passenger type "auto" is subject, but will not include:
    - (a) Overdue lease or loan payments;
    - (b) Financial penalties imposed under the lease due to high mileage, excessive use or abnormal wear and tear;
    - (c) Security deposits not refunded by the lessor;
    - (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
    - (e) Carry-over balances from previous loans or leases, or
  - (2) Actual cash value of the stolen or damaged property.
- b. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

2. **SECTION V - DEFINITIONS** is amended by adding the following, but only for the purposes of this **Loan or Lease Gap Coverage**:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

**N. Glass Repair - Waiver of Deductible**

**SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

No deductible applies to glass damage if the glass is repaired in a manner acceptable to us rather than replaced.

**O. Duties in the Event of an Accident, Claim, Suit or Loss - Amended**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss, a.** is amended by adding the following:

This condition applies only when the "accident" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation; or
4. A member or manager, if you are a limited liability company.

**P. Unintentional Failure to Disclose Hazards**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation or Fraud** is amended by adding the following:

However, if you unintentionally fail to disclose any hazards existing on the effective date of this Coverage Form, we will not deny coverage under this Coverage Form because of such failure.

**Q. Mental Anguish Resulting from Bodily Injury**

**SECTION V - DEFINITIONS, C. "Bodily injury"** is deleted in its entirety and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish and death sustained by the same person that results from such bodily injury, sickness or disease. "Bodily injury" does not include mental anguish or death that does not result from bodily injury, sickness or disease.

**R. Coverage for Certain Operations in Connection with Railroads**

With respect to the use of a covered "auto" in operations for or affecting a railroad:

1. **Section V - Definitions, H. "Insured contract", 1.c.** is amended to read:
  - c. An easement or license agreement;
2. **Section V - Definitions, H. "Insured contract", 2.a.** is deleted.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**State**

**Blanket/Schedule/State**

**AZ**

**BLANKET**

**Blanket Waiver:** Anyone for whom you have agreed to provide this Waiver subject to the terms of this endorsement

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 05/01/2021      Policy No. 1016380  
Insured Hunter Contracting Co/Hunter Ditch LP/BED LLC

Endorsement No. 4  
Premium \$

Insurance Company CopperPoint American Insurance Company

Countersigned by

