

**MODEL CONTRACT FOR
CONSTRUCTION SERVICES**

CONTRACT NO. MA-080-TBD

This Contract is made and entered into the ____ day of _____, 20____, by and between the County of Orange, a political subdivision of the State of California, herein referred to as, "Owner", and _____, herein referred to as "Construction Manager at Risk ("CMAR)", with Owner and CMAR sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

Owner and CMAR agree as follows:

1. CONTRACT DOCUMENTS

Contract Documents, which together comprise the complete Contract between Owner and CMAR, consist of the following: Owner approved Guaranteed Maximum Price (GMP) package(s), as approved by the Director of OC Public Works or designee ("Director"); this Contract; the General Conditions; Supplementary General Conditions; Addenda; Attachments; Plans; Standard Specifications; all Reference Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Contract, including Amendments and Change Orders. The Contract Documents also include a Faithful Performance Bond and the Labor and Material Payment Bond corresponding with each GMP. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. SCOPE OF WORK

CMAR shall perform all work as required by, and in strict accordance with the Contract Documents (the "Project"), which consists, in general of the construction of ***Brea Boulevard Bridge Replacement and Corridor Enhancement Project***.

Other items of work or details not mentioned above that are required by the Plans, Standard Specification, or Special Provisions, shall be performed, placed, and constructed.

3. CONTRACT PRICE, CONTINGENCY AND CONTRACT TIME

3.1 CONTRACT PRICE

Owner shall pay CMAR for all work required by the Contract Documents at or below the total Guaranteed Maximum Price (GMP) Construction Services Contract of _____ Dollars (\$_____). GMPs may be adjusted pursuant to the "Changes" Section of the General Conditions, and in accordance with the "Payments" Section of the General Conditions. The sum of all Guaranteed Maximum Prices (GMP) submittals (as defined in the General Conditions) shall not exceed the total Contract Price.

3.2 CONTINGENCY

- 3.2.1 "Contingency (CMAR's)" means a fund to cover cost growth during the Project used at the discretion of the CMAR usually for costs that result from Project circumstances. The amount of the CMAR's Contingency will be a separate line item in the GMP package. Use and management of the CMAR's Contingency during the construction phase is as presented in the Design Phase Contract, as reproduced in part below for reference.

CMAR's Contingency is an amount the CMAR shall use under the following conditions:

- (5) At its discretion for increases in the Cost of the Work which are not the Owner's responsibility, or
- (6) With written approval of the Owner for increases in General Condition Costs. CMAR's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.
- (7) Any CMAR Contingency not utilized shall be shared 50/50 between the Owner and CMAR after Project completion.

3.2.2 "Contingency (Owner's)" means a fund to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CMAR at the time that Owner's Contingency is used. Any Owner Contingency not utilized shall revert to the Owner after Project completion.

3.3 CONTRACT TIME

Within 10 calendar days of the Owner's execution of the Contract, CMAR shall submit to Owner for its review: acceptable bonds (as detailed below); proof of insurance; and updated Project Schedule including construction work as required by the Contract Documents. If Owner rejects the submitted documents, CMAR will have 5 additional calendar days to resubmit. If CMAR fails to submit documents within the required time(s), the Contract Time (as defined below) will be reduced by the number of days which exceed the time for submittal. If CMAR fails to submit acceptable documents by the second submission, Owner may, at its sole discretion, reduce the Contract Time by the number of days between Owner's rejection of the second submission and Owner's approval of the documents.

Upon Owner's approval of the bonds, insurance, and updated Project Schedule, Owner will deliver to CMAR a signed copy of the Contract and a Notice to Proceed with the work. CMAR shall not commence construction until Owner issues the Notice to Proceed for the GMP package(s). CMAR shall complete all work required by the Contract Documents within < **Contract Time Days** > calendar days of the effective date of the Notice to Proceed ("Contract Time"). The Contract Time includes < **Weather Days** > of anticipated weather days necessitating stoppage of work, and a time extension due to rain or other adverse weather conditions will only be granted in accordance with the General Conditions.

The Owner will not be responsible for the failure of the CMAR to plan, schedule, and execute the work in accordance with the approved schedule or the failure of the CMAR to meet the Contract completion dates or the failure of the CMAR to schedule and coordinate the work of his own trades and subcontractors or to coordinate with others separate Contractors.

4. LIQUIDATED DAMAGES

In accordance with Government Code Section 53069.85, CMAR agrees to forfeit and pay to Owner the sum of < **Liquidated Damages** (\$_____) > per day ("Liquidated Damages") for each calendar day that completion of all the work required by the Contract Documents is delayed beyond the Contract Time, or specified portion of work if designated in a GMP, as may be adjusted by Change Order. Owner may deduct such sum from any payments due to or to become due to CMAR. If the Liquidated Damages exceed the unpaid balance of the Contract Price otherwise owed to CMAR, then CMAR shall immediately pay Owner the difference.

5. CMAR SHALL PERFORM ____ % OR MORE OF THE WORK

CMAR shall be capable of performing, and shall perform with its own organization, work amounting to at least ____% of the GMP amount. However, any GMP Item designated as a Specialty GMP Item will be excluded from the GMP amount for purposes of this Section only.

6. OMITTED

7. EMPLOYEE ELIGIBILITY VERIFICATION

CMAR hereby certifies that it complies with all applicable laws and regulations regarding the eligibility of its employees to work in the United States, and that all of its employees performing work under this Contract meet all citizenship or immigration status requirements to do so. CMAR shall obtain all documentation necessary to verify the employment eligibility status of covered employees as described by U.S. Citizenship and Immigration Services Form I-9. CMAR shall retain such documentation for the period prescribed by law. CMAR shall indemnify, defend with counsel approved in writing by Owner, and hold harmless the Owner, its agents, officers, and employees from any sanctions or liability that may be assessed in connection with any alleged violation of federal or State laws or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8. SECURING WORKERS' COMPENSATION INSURANCE CERTIFICATION

CMAR, by executing this Contract, hereby certifies:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

9. PARTIES' REPRESENTATIVES

9.1 OWNER'S REPRESENTATIVES

- 9.1.1 Director will designate in writing the person who will act ex-officio as Owner's representative during construction of the Project. Unless otherwise expressly stated in the Contract Documents, Owner's designated representative will issue and receive all written communications on behalf of Owner for the Project. The Project Manager shall manage the routine responsibilities of Owner, but is not authorized to make decisions for Owner that materially affect this Contract or create additional legal liabilities for Owner.

Owner has the final decision in all matters affecting the work. Owner has the authority to enforce CMAR's compliance with the Contract Documents. Owner's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by CMAR and all work performed by CMAR shall be subject to the approval of Owner.

- 9.1.2 The Owner shall not be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the CMAR's failure to carry out the work in accordance with the Contract Documents.

- 9.1.3 The Owner will not be responsible for the acts or omissions of the CMAR, or any subcontractor, or any CMAR's or subcontractor's agents or employees, or any other persons performing any of the work.

9.2 OWNER'S AUTHORITY

Owner has the final authority in all matters affecting the work. Owner has the authority to enforce Contractor's compliance with the Contract Documents. Owner's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by Contractor and all work performed by Contractor shall be subject to Owner's approval.

9.3 CMAR'S REPRESENTATIVES

- 9.3.1 Representative and Alternate: Before starting work, CMAR shall designate in writing a representative who shall have complete authority to act for it. The representative shall be the same as proposed during original Request for Proposal selection process. CMAR may also designate an alternate representative (also as identified during original Request for Proposal selection process) with complete authority to act for it. Owner may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless CMAR identifies to Owner in writing the officer(s) or employee(s) with such authority. Any order or communication given to this representative shall be deemed delivered to CMAR. In the absence of CMAR's representative, instructions or directions may be given by Owner to the Project Manager or superintendent. Such order shall be complied with promptly and referred to CMAR or its representative. CMAR's representative and alternate must be able to read, write, and speak English fluently.
- 9.3.2 CMAR's Project Manager: CMAR shall provide the services of the Project Manager, as proposed during original Request for Proposal selection process. CMAR's Project Manager, if different than designated representative, shall represent CMAR in the absence of CMAR's designated representative or alternate, and all directions given to the Project Manager shall be binding as if given to CMAR. Owner may require CMAR to replace the Project Manager whose conduct or performance is unsatisfactory. CMAR shall not change its Project Manager without Owner's consent unless the Project Manager is unsatisfactory to CMAR or ceases to be in CMAR's employ. If CMAR's Project Manager leaves the Project, CMAR shall replace him or her within 24 hours (unless additional time is agreed upon by Owner) with a new, well-qualified Project Manager acceptable to Owner.
- 9.3.3 Project Engineer: CMAR shall provide the services of the Project Engineer, as proposed during the original Request for Proposal selection process. The CMAR's Project Engineer shall be responsible for all Architect-Engineer (A-E) services, as required by law, and is registered by the State of California for the practice of specialized A-E services per the Contract Documents.
- 9.3.4 Superintendent(s): CMAR shall provide the services of the superintendent(s) as proposed during original Request for Proposal selection process. A superintendent shall be present at the work site whenever work is in progress including whenever weather conditions necessitate its presence to take measures necessary to protect the work, persons, or property. CMAR's superintendent shall represent CMAR in the absence of CMAR's designated representative, alternate or Project Manager, and all directions given to the superintendent(s) shall be binding as if given to CMAR. The superintendent must read, write, and speak English fluently. Owner may require CMAR to replace a superintendent whose conduct or performance is unsatisfactory. CMAR shall not change its superintendent without Owner's consent unless the superintendent is unsatisfactory to CMAR or ceases to be in CMAR's employ. If CMAR's superintendent leaves the Project, CMAR

shall replace him or her within 24 hours (unless additional time is agreed upon by Owner) with a new, well-qualified superintendent acceptable to Owner.

- 9.3.5 Alternate Supervision Plan: For Projects on which the original Contract Price is \$50,000 or less, CMAR may propose for Owner's consideration a plan for providing supervision on the site that does not involve the presence of a full-time superintendent, representative, or alternate, as required by the preceding paragraphs. Any such plan must ensure that CMAR's supervision of the work is adequate and effective for purposes of completing the work timely and in compliance with the Contract Documents. Owner may approve or reject CMAR's proposed plan in its sole and absolute discretion.
- 9.3.6 Emergency Contacts: CMAR shall provide Owner with a list of names and telephone numbers at which CMAR's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

10. SIGNATURE REQUIREMENTS

The Contract must be signed by officer(s) authorized to bind CMAR. If documentation demonstrating express Owner is not provided, then the Contract must be signed by those officers with apparent Owner to bind CMAR. If CMAR is a corporation, such signatures must comply with Corporations Code Section 313, as follows:

One signature by the chairman of the board, the president, or any vice president; and one signature by the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

11. ENTIRE CONTRACT

The Contract Documents represent the entire and integrated Contract between Owner and CMAR and supersede all prior representations, statements, or Contracts concerning the subject matter of this Contract, whether verbal or written.

12. GOVERNING LAW AND VENUE – CODE OF CIVIL PROCEDURE SECTION 394

This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

The parties specifically agree that by soliciting and entering into and performing services under this Contract, the CMAR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this Contract is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering this Contract, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

(TBD)
a California Corporation

Date: _____

By _____

Print Name & Title

(If a corporation, the document must be signed by two corporate officers. The 1st must be either Chairman of the Board, President or any Vice President.)

Date: _____

By _____

Print Name & Title

(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.)

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By _____

Print
Name _____

Title _____

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: _____

Deputy

Print
Name _____

GENERAL CONDITIONS

1. DEFINITIONS

As used in the Contract Documents, the following terms shall have the following definitions:

Term	Definition
"day"	Unless otherwise specified within the Contract Documents, all references to any "day" or number of "days" shall mean consecutive calendar days (including all holidays and weekends).
"working day"	Any day within the period between the date of the Notice to Proceed and Owner's acceptance of the work, except: Saturday; Sunday; or any day designated as a holiday by Owner. Notwithstanding the foregoing, any day will be treated as a working day if the Contract Documents require that it be so treated, or CMAR with Owner's approval elects to work on such day.
Addendum/Addenda	Written or graphic instrument issued prior to the submittal of the GMP (hereinafter defined) Proposal(s), which corrects or changes the Contract Documents.
Agreement	The portion of the Contract Documents, signed by both Parties, that contains the Project name, Contract Price, Contract Time, Liquidated Damages, and other terms and conditions.
Amendment	A written instrument issued after execution of the Contract Documents signed by the Owner and CMAR, stating their Contract upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Contract terms.
Application for Payment	CMAR's periodic or one-time claim for payment based on work completed.
Accepted Project Schedule	CMAR's Project progress schedule after it has been accepted by Owner and designated as the Accepted Project Schedule, and updated by each accepted monthly Schedule Update. The CMAR's Project Schedule was initiated upon execution of the Design Services Contract.
Board of Supervisors	Owner's governing body.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "CHANGES" Section of the General Conditions.
Change Order Request	Owner's request for CMAR to provide a proposal and price/time quote for Owner's desired Change Order, or Owner's description of work to be performed pursuant to CMAR's Request for Change.
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "CHANGES" Section of the General Conditions.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, as they may be amended.
Contract	The complete agreement between Owner and CMAR covering the Project, as represented by the Contract Documents.

Term	Definition
Contract Documents	Documents comprising the complete agreement between Owner and CMAR as enumerated in the "CONTRACT DOCUMENTS" Section of the Agreement.
Contract Price	The total dollar amount of the Contract identified in the "CONTRACT PRICE AND TIME" Section of the Agreement as it may be adjusted in accordance with the "CHANGES" Section of the General Conditions.
Contract Time	The number of calendar days specified in the "CONTRACT PRICE AND TIME" Section of the Agreement that CMAR has to complete the work after the issuance of a Notice to Proceed for a GMP package, as it may be adjusted in accordance with the "CHANGES" Section of the General Conditions.
Contract Unit Price	The amount stated in the GMP Proposal for a single unit of an item of work.
Construction Manager at Risk Entity (CMAR)	The Respondent ("Party") awarded the Contract by Owner.
COUNTY	The County of Orange, a political subdivision of the State of California, and its representatives.
DISTRICT	Orange County Flood Control District
Defective Work	CMAR's performance that does not conform to the requirements of the Contract Documents, industry standards, manufacturers' recommendations, or requirements of the "QUALITY OF MATERIALS AND WORKMANSHIP" Section of the General Conditions.
Director	Except where otherwise provided, references to "Director" shall mean the Director of OC Public Works or his or her designee.
Dust Control Plan	CMAR's plan for compliance with Owner's Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403 (See the "PERFORMANCE" Section of the General Conditions.)
Emergency/Contingency Plan	CMAR's provisions for handling spills of hazardous, liquid, or nuisance materials prepared in accordance with the "HAZARDOUS OR CONTAMINATED MATERIALS" subsection of the "PERFORMANCE" Section of the General Conditions.
Escrowed Documents	Those documents sealed, submitted, and held in accordance with the "ESCROWED DOCUMENTS" Section of the Agreement.
Final Payment	The last and complete payment by Owner to CMAR under the Contract as provided by the "PAYMENTS" Section of the General Conditions.
Guaranteed Maximum Price (GMP) Proposal	A GMP Proposal is an offer made by the CMAR to the Owner in accordance with the Instructions to Respondents.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.
Health and Safety Plan (H&SP)	CMAR's detailed provisions for compliance with all applicable health and safety laws, orders and regulations. (See the "PERFORMANCE" Section of the General Conditions.)
Liquidated Damages	Damages specified in the "LIQUIDATED DAMAGES" Section of the Agreement, payable to Owner for CMAR's failure to complete the work within the Contract Time.

Term	Definition
Lump Sum (LS)	"Lump Sum", "L.S.", or "Job" prices are paid according to a flat total for all labor, materials, overhead, and other costs associated with the work item. (See the "PAYMENTS" Section of the General Conditions.)
Manifests	Required documents that identify the generator, transporter, disposal facility and type of hazardous material(s). Manifests include, but are not limited to: documents entitled Uniform Hazardous Waste Manifest(s), Bills of lading, or similar documentation concerning the handling, transportation, and disposal of materials (See the "HAZARDOUS OR CONTAMINATED MATERIALS" subsection of the "PERFORMANCE" Section of the General Conditions.)
Notice of Completion	The document recorded by Owner in accordance with Civil Code Section 9204 after completion of the work.
Notice of Termination	Owner's notice to CMAR specifying the effective date of a termination of the Contract (in whole or in part) .
Owner	The County of Orange, a political subdivision of the State of California, and its representatives.
Party / Parties	The Owner and/or CMAR.
Plans	The drawings, profiles, cross sections, standard plans, working drawings, and shop drawings, or reproductions thereof, approved by Owner, which show the location, character, dimensions, or details of the Project.
Project	All work performed by CMAR as required by, and in strict accordance with, the Contract Documents.
Project Manager (PM)	The Owner representative identified in the Contract Documents or otherwise specified by Owner in writing.
Reference Specifications	Those bulletins, standards, rules, methods of analysis or testing, codes, and specifications of other agencies, engineering societies, or industrial association referred to in the Contract Documents. These shall refer to the latest edition, including amendments in effect and published at the time of advertising the Contract or issuing the permit, unless specifically referred to by edition, volume, or date.
Request for Change	CMAR's request that Owner issue a Change Order.
Retention	The amount of progress payments withheld by Owner as security for CMAR's complete and proper performance of the Contract as provided by the "PAYMENTS" Section of the General Conditions.
Retention Payment	Payment of the Retention in accordance with Public Contract Code 7107 and the "RETENTION PAYMENT" Section of the General Conditions.
Schedule of Values	CMAR's detailed breakdown of unit prices and costs of services, labor, and materials pursuant to the "PROJECT SCHEDULE AND SCHEDULE OF VALUES" Section of the General Conditions.
Schedule Update(s)	CMAR's monthly update of work progress. (See the "PROJECT SCHEDULES" and "PAYMENTS" Sections of the General Conditions.)
Special Provisions	The portion of the Contract Documents describing the specific requirements of the Project, which may include additions and revisions to the Standard Specifications setting forth conditions and requirements peculiar to the Project.

Term	Definition
Standard Plans	Details of standard structures, devices, or instructions referred to on the Plans or in the Special Provisions by title or number.
Standard Specifications	The Standard Specifications for Public Works Construction (SSPWC), known as the "Greenbook," 2015 Edition, Parts 2 through 5, including any supplements effective as of the time of Bid opening.
Subcontractor(s)	A person, firm or corporation having an independent Contract with the CMAR to furnish services required as its independent professional associate or consultant or perform portions of the work with the respect to the Project. May be herein referred to as sub-consultant or subcontractor
Submittals	Items that the Contract Documents require CMAR to submit to Owner after award of the Contract and issuance of the Notice to Proceed, as provided by the "SUBMITTALS" Section of the General Conditions.
Supplementary General Conditions	The portion of the Contract Documents identified describing additions and revisions to the General Conditions setting forth conditions and requirements peculiar to the Project.
Traffic Control Plan (TCP)	CMAR's provisions for coordination of its traffic at the Project site. (See the "PERFORMANCE" Section of the General Conditions.)
Unilateral Change Order	A Change Order issued by the Owner where Owner and CMAR cannot reach an agreement on a proposed modification to the Contract.

2. COMPLIANCE WITH LAWS AND REGULATIONS

CMAR shall strictly adhere to and obey all applicable laws, statutes, codes, ordinances, rules, regulations, tariffs, and orders of any local, State, or federal governmental or regulatory authority having jurisdiction over the Project.

3. CMAR'S LICENSE

At all times during the term of this Contract, CMAR shall: (a) maintain in good standing all licenses required by the State of California or any other governmental entity for it to perform the work required under the Contract; and (b) comply in all respects with the California CMARs' State License Law, Business & Professions Code Section 7000, et seq.

4. SUBCONTRACTS

4.1. MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 4.1.1. The selection of major Sub-consultants, Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone, unless approved in writing by the County's Project Manager. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 4.1.2. The CMAR will prepare a Subcontractor/Supplier selection plan and submit the plan to the Owner for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section 2.8.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section 2.8.3. This plan will also identify those subcontractor trades that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.

- 4.1.3. Selection by qualifications only - The Owner may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.
- 4.1.4. Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP Proposal.
- 4.1.5. The CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the Owner with its review and recommendation.
- 4.1.6. The CMAR must receive Owner approval of the selected Subcontractor(s)/Supplier(s).
- 4.1.7. The CMAR will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 4.1.8. Selection by qualifications and competitive bid - The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the Owner with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to Section 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
- 4.1.9. The CMAR will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the Owner and solicit bids for the various Work categories. The CMAR will identify the Small Business Enterprise Subcontractors and Suppliers and during the bidding process keep the Owner informed on the progress of meeting the desired SBE goal. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request approval by the Owner to submit less than three names. No change in the recommended Subcontractors/Suppliers will be allowed without prior written notice to and approval by the Owner.
- 4.1.10. If the Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor/Supplier that is acceptable to the Owner.
- 4.1.11. The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers with Owner's Project Manager or their designee present.
- 4.1.12. If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the Owner concurs that in order to insure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.
- 4.1.13. The CMAR shall request the pre-qualified Subcontractors to provide a detailed bid for the services requested. The Subcontractor bid, provided on the Subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be

performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the Owner Project Manager in attendance to observe and witness the process. The CMAR will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

- 4.1.14. The CMAR will be required to prepare two different reports on the subcontracting process as prescribed below:
- 4.1.15. Within fifteen Days after each major subcontractor/Supplier bid opening process, the CMAR will prepare a report for the Owner's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subcontract, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and its cost that the CMAR intends to self-perform, if any.
- 4.1.16. Upon completion of the Subcontractor/Supplier bidding process, the CMAR shall submit a summary report to the Owner of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/ Suppliers for each category of Work.
- 4.1.17. The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 4.1.18. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the Owner, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 4.1.19. Promptly after receipt of the Notice of Intent to Award, the Owner will conduct a pre-award conference with the CMAR and other Project Team members. At the pre-award conference, the CMAR will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the Owner has to any nominated Subcontractor or Supplier; (b) discuss Owner concerns relating to any proposed self-performed Work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the Owner will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

4.2. LICENSED SUBCONTRACTOR

Each Subcontractor selected for the work shall be licensed in the State of California in the Subcontractor's particular field.

CMAR shall comply with Public Contract Code Section 22166 for the award of subcontracts exceeding one-half of one percent of the contract price allocable to construction work.

4.3. COMMUNICATIONS

Communications with Subcontractors shall be made through CMAR except when in emergency situations CMAR is not readily available, in which case detailed instructions shall be transmitted to Subcontractors directly.

4.4. RESPONSIBILITY

CMAR shall give personal attention to the fulfillment of the work and shall keep the work under its control. CMAR shall be responsible for all work required by the Contract Documents and the acts and omissions of Sub-consultants, Subcontractors, and all persons directly or indirectly employed by them as CMAR is for CMAR's acts and omissions and of persons directly or indirectly employed by CMAR. CMAR shall indemnify and hold Owner harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor were the CMAR's employee. CMAR shall pay each Subcontractor promptly the amount allowed CMAR on account of such Subcontractor's work to the extent of such Subcontractor's interest therein.

4.5. CONTRACTUAL RELATIONS

Nothing contained in this Contract shall create any contractual relations between Owner and any Subcontractor.

4.6. LISTING AND SUBSTITUTION OF SUBCONTRACTORS

CMAR shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq. CMAR may not substitute a person or entity in place of any subcontractor listed in the Proposal except with Owner's written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

5. IMPLEMENTATION OF CONTRACT DOCUMENTS

5.1. PLANS AND SPECIAL PROVISIONS

- 5.1.1. Checking: CMAR shall implement the Quality Assurance / Quality Control (QA/QC) Plan as prescribed in the Design Services Contract to include constructability and bidability reviews during the Plans, Specifications, and Estimates (PS&E) Development Process. Prior to construction, the CMAR shall review all Contract Documents and shall promptly notify Owner of any discrepancies and provide the recommended resolution for Owner concurrence. CMAR shall notify Owner about the absence of a specification or detail and provide the missing information to the Owner. Such an absence shall not excuse CMAR from following standard practices in the industry. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Larger-scale, more detailed drawings shall in general govern over smaller-scale, less detailed drawings. Architectural and engineering schedules shall take precedence over other portions of the Plans. CMAR shall compare all Plans and verify the dimensions before laying out the work and will be responsible for any errors that might have been avoided by doing so. If measurements are affected by site conditions, CMAR shall take new measurements for which CMAR bears full responsibility, and which shall be treated as if represented in the final, Owner approved Plans and Special Provisions.
- 5.1.2. Omissions and Mistakes: CMAR shall call to Owner's attention, as soon as identified, any omissions in the final, Owner approved Plans and Special Provisions necessary to carry out the intent of the Contract Documents or that are customarily performed. The CMAR shall promptly notify the Owner in writing of the correction. If warranted, CMAR shall request a Change Order in accordance with the "CHANGES" Section of these General Conditions. MAR shall not make any adjustment to the work without first receiving the Owner's approval, such adjustment without

Owner approval shall be at CMAR's own risk and expense.

- 5.1.3. **Conflicting Information:** In case of conflicting information in the Contract Documents, CMAR's GMP Proposal shall include the most expensive alternative.
- 5.1.4. **Documents at the Site:** CMAR shall keep available at the site for ready reference a complete set of the Contract Documents. CMAR also shall maintain a complete set of approved shop drawings, manufacturers' recommendations and instructions, and copies of all Project correspondence at the site. CMAR shall provide Owner with a set of manufacturers' recommendations and instructions.
- 5.1.5. **"As-Built" Plans at the Site:** CMAR shall maintain at the site a complete "As-Built" set of Plans for the Project. CMAR shall update the As-Built Plans each day. CMAR shall make As-Built Plans available to Owner immediately upon request. Any delay by CMAR in providing Owner with access to properly updated As-Built Plans may result in a commensurate delay in Owner's processing of progress payment applications. Prior to final payment, CMAR shall deliver a complete set of the As-Built Plans to Owner in a format acceptable to Owner and suitable for use in preparing a reproducible set of record drawings for the Project.
- 5.1.6. **Deviations:** CMAR shall not deviate from the final, approved Plans and the dimensions shown therein, without first obtaining Owner's written permission for the deviation.

5.2. DIVISIONS OF THE SPECIAL PROVISIONS

- 5.2.1. For convenience, the Special Provisions are arranged in many divisions and sections, but such separations shall not be considered as the limits of the work of any type or as the limits of the work required for any subcontract or trade. CMAR shall bear sole responsibility for defining the scope of work for each trade and each of its Subcontractors. Owner will not be responsible for any division of work among the various Subcontractors or trades regardless of the location of applicable provisions in the Special Provisions.
- 5.2.2. Any description of work included in a section is listed for convenience only, and shall not be considered a prescriptive or comprehensive list of items of work necessary to complete the work of that section.
- 5.2.3. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the work.

5.3. PRECEDENCE OF CONTRACT DOCUMENTS

If there is a conflict among Contract Documents, the document highest in precedence shall control.

The precedence shall be:

- 5.3.1. Permits and applicable regulations as may be provided by law or that govern the site;
- 5.3.2. Amendments and Change Orders;
- 5.3.3. Agreement;
- 5.3.4. Proposal, as accepted by Owner;
- 5.3.5. Addenda and Bulletins;
- 5.3.6. Special Provisions;
- 5.3.7. Supplemental General Conditions;
- 5.3.8. General Conditions;
- 5.3.9. Plans;
- 5.3.10. Standard Plans;
- 5.3.11. Standard Specifications; and
- 5.3.12. Reference Specifications, Attachments, and Appendices.

6. PRE-CONSTRUCTION

6.1. CMAR'S PRE-CONSTRUCTION OBLIGATIONS

Prior to beginning construction, CMAR shall: visit the site; verify measurements; verify all existing conditions; examine all adjoining work; and ascertain the best means of executing the work. CMAR's or each Subcontractor's commencement of the work of its trade will be interpreted as CMAR's acceptance of existing conditions over which the new work must be placed, installed, or otherwise performed. The CMAR is ultimately responsible for all necessary field investigations needed to confirm and document the existing conditions. As prescribed in the Design Services Contract, the CMAR shall identify and perform all testing required to adequately design and construct the project such as: geotechnical investigations, utility surveys, topographic surveys, test borings, hazardous material, destructive testing, and review with the Owner's Project Manager.

7. BONDS, INDEMNITY, AND INSURANCE

7.1. BONDS

7.1.1. Payment and Performance Bonds

Within 10 days after award of the Contract, CMAR shall furnish a payment bond for 100% of the amount of the Contract, in accordance with Civil Code Section 9554, and a performance bond for 100% of the amount of the Contract, guaranteeing the faithful performance of the Contract. CMAR shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders.

The payment and performance bonds must each be issued by a surety that: (i) is authorized by the California Insurance Commissioner to transact surety insurance in the State of California; (ii) has assets exceeding its liabilities in an amount equal to or in excess of the amount of the bonds; and (iii) acts in compliance with Insurance Code Section 12090.

The payment and performance bonds shall be in the form provided with the Instructions to Respondent(s) and are subject to approval by the Owner.

7.1.2. Owner's Right to Replace Surety

If any surety upon any bond furnished in connection with this Contract becomes objectionable to Owner and fails to submit to Owner the documents described in California Code of Civil Procedure Sections 995.660(a)(1) through (a)(4) within the time specified in those Sections, then CMAR shall promptly furnish such additional security as may be required by Owner to protect the interests of Owner and of persons entitled to make a claim against the payment bond. Failure to furnish such additional security shall constitute a material breach of the agreement.

7.2. INDEMNIFICATION

To the maximum extent allowable by law, CMAR agrees to indemnify, defend with counsel approved in writing by Owner, and hold Owner, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which the County of Orange's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any loss, injury, liability claims, demands, costs and expenses whether incurred by or made against Owner or County Indemnitees of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CMAR pursuant to this CONTRACT. This indemnity applies even in the event of Owner or County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require CMAR to indemnify Owner or County

Indemnitees for losses caused by Owner's or County Indemnitees' active negligence, sole negligence, willful misconduct, or defects in design furnished by them.

CMAR's indemnity obligation set forth above shall include but not be limited to all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (1) failure of CMAR to comply with its obligations under the Contract Documents, (2) injury or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in protecting the work; (3) use of materials or other things used or employed in the construction that are not in conformance with the Contract Documents; and (4) any negligent or intentional act or omission by CMAR and any of its respective officers, employees, agents, subcontractors, suppliers, and representatives during the progress of the work or at any time before its completion and final acceptance.

If judgment is entered against CMAR and Owner by a court of competent jurisdiction because of the concurrent active negligence of Owner or County Indemnitees, CMAR and Owner agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

7.3. INSURANCE

Prior to the provision of services under this Contract, CMAR agrees to purchase all required insurance at CMAR's expense, including all endorsements required herein, necessary to satisfy Owner that the insurance provisions of this Contract have been complied with. CMAR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with Owner during the entire term of this Contract. In addition, all Subcontractors performing work on behalf of CMAR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CMAR. Owner reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. All Subcontractors performing work on behalf of CMAR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CMAR.

CMAR shall ensure that all Subcontractors performing work on behalf of CMAR pursuant to this Contract shall be covered under CMAR's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for CMAR. CMAR shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by Owner from CMAR under this Contract. It is the obligation of CMAR to provide notice of the insurance requirements to every Subcontractor and to receive proof of insurance prior to allowing any Subcontractor to begin work. Such proof of insurance must be maintained by CMAR through the term of this Contract for inspection by Owner at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of and duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, this County may terminate the Contract.

7.3.1. Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, Owner retains the right to approve or reject a carrier after a review of the carrier's performance and financial ratings.

7.3.2. Minimum Policy Limits and Coverage

The policy or policies of insurance maintained by the CMAR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability	\$10,000,000 per occurrence \$10,000,000 aggregate
Contractor's Pollution Liability Including coverage for NODS	\$2,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

7.3.3. Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

7.3.4. Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange and the City of Brea**, and their elected and appointed officials, officers, employees and agents as additional insureds.
- 2) A primary non-contributing endorsement evidencing that CMAR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, **County of Orange and the City of Brea**, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

CMAR shall notify Owner in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to Owner. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which Owner may suspend or terminate this Contract pursuant to the "TERMINATION FOR CAUSE" Section of these General Conditions.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded pursuant to the "WRITTEN NOTICES" Section of these General Conditions.

Owner expressly retains the right to require CMAR to increase or decrease minimum limits of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by Owner's Risk Manager as appropriate to adequately protect Owner.

Owner shall notify CMAR in writing of changes in the insurance requirements. If CMAR does not deposit copies of acceptable certificates of insurance and endorsements with Owner incorporating such changes within thirty days of receipt of such notice, CMAR may be deemed in breach without further notice to CMAR, and Owner shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CMAR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

7.4. RESPONSIBILITY FOR DAMAGES OR INJURY

- 7.4.1. Owner and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the work, any loss or damage to any of the materials or equipment used in the work, or any injury to any person or property by any cause that might reasonably have been prevented by CMAR, its employees, or its Subcontractors. CMAR shall indemnify and defend Owner against any claims or liability under this section pursuant to the "INDEMNIFICATION PROVISIONS" Section of these General Conditions.
- 7.4.2. CMAR shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of CMAR's performance under this Contract, according to the "HAZARDOUS OR CONTAMINATED MATERIALS" Section of the General Conditions.
- 7.4.3. Payment of any penalties, fines, or other liability assessed to Owner by regulatory agencies due to CMAR's or any Subcontractor's action or inaction in performing the work shall be CMAR's sole responsibility.
- 7.4.4. CMAR shall pay any assessments or damages covered by this Section directly, or, at Owner's discretion, Owner may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to CMAR.

8. SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS

8.1. PROJECT SCHEDULES

- 8.1.1. Project Schedules: Prior to Owner's issuance of the Notice to Proceed, CMAR shall submit to Owner for Owner's review an initial construction progress schedule. Owner's acceptance of the initial construction progress schedule shall be conditioned on its acceptance of all other documents CMAR is required to submit to Owner by the "CONTRACT TIME" Section of the Agreement. Owner's acceptance of this schedule does not modify any of the provisions of the

Contract Documents including, but not limited to, the Contract Time or any time specified in the Contract Documents for Owner's review of submittals.

Once the Notice to Proceed is issued, the Project Schedule shall be updated to reflect the Contract Time as defined in the Agreement. CMAR shall prepare the Project Schedule using the critical path format. The CMAR shall submit to the Owner for acceptance of the updated Critical Path Method (CPM) Project Schedule for the project within 30 calendar days after execution of the Contract or at the preconstruction conference, whichever is earlier. Unless a specific software application is called for elsewhere in the Contract Documents, CMAR shall use Microsoft Project, SureTrak Project Manager, Primavera Project Planner, or other scheduling software acceptable to Owner to configure all versions of its construction progress schedule.

CMAR shall include on the Project Schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project, and shall allow no less than 21 days for Owner's review of each such submittal. After CMAR's updated Project Schedule is accepted by Owner, it will be designated as the "Accepted Project Schedule". An Accepted Project Schedule is a condition precedent to Owner's obligation to make the initial progress payment to CMAR.

The CPM Project Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of CMAR's work. The CPM Project Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Period and include activities for deliverables and reviews in the schedule. Sufficient liaison shall be conducted, and information provided, to indicate coordination with utility owners having facilities within the project limits. The schedule must reflect the utility adjustment schedules included in the Contract Documents, unless changed by mutual agreement of the utility company, the CMAR and the Owner.

Failure to include any element of work or any activity relating to utility work will not relieve the CMAR from completing all work within the Contract Time at no additional time or cost to the Owner, notwithstanding the acceptance of the schedule by the Owner.

The CPM Project Schedule may indicate a completion date in advance of the expiration of Contract Time. However, the Owner will not be liable in any way for the CMAR's failure to complete the Project prior to expiration of Contract Time. Any additional costs, including extended overhead incurred between the CMAR's scheduled completion date and the expiration of Contract Time, shall be the responsibility of the CMAR. The CMAR shall not be entitled to claim or recover any such costs from the Owner.

- 8.1.2. Weekly Meetings and Look-Ahead Charts: CMAR shall participate in weekly meetings with Owner during which the parties shall exchange information regarding the actual progress of construction. Owner and CMAR shall attempt to agree upon quantities and percentages of completion that reflect the actual progress of construction. At each meeting CMAR shall submit 4 copies of a 2-week look-ahead chart. The 2-week look-ahead chart shall include only those activities that will be started, in progress, or completed during the next 2-week period. The format of the look-ahead chart shall be subject to Owner's approval.
- 8.1.3. Monthly Schedule Updates: Each month, CMAR shall submit to Owner for its review an update of the Accepted Project Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If Owner and CMAR cannot agree, then CMAR shall use Owner's assessment of actual progress to prepare the Schedule Update. CMAR's monthly Schedule Update shall include: (a) a diagram showing the target versus actual dates for each activity; (b) an updated critical path method report; and (c) a narrative report that includes, but is not limited to, a description of problems, current and anticipated delays and their causes, impacts of delays, and corrective actions that CMAR has taken or proposes to take to overcome problems and recover from delays. CMAR shall identify any events that will delay the completion of an interim milestone or the completion of the overall Project in the monthly

Schedule Update. On Owner's acceptance of the monthly Schedule Update, it shall become the current Accepted Project Schedule. Any request for an extension of the Contract Time must be based on the Accepted Project Schedule. The submission of an acceptable monthly Schedule Update will be part of the basis of the progress payment and shall be a condition precedent to Owner's obligation to make such progress payment to CMAR.

- 8.1.4. Recovery Schedule: If any activity on the critical path is more than 7 days behind the Accepted Project Schedule and it appears that CMAR may not complete all work within the Contract Time, then Owner may require CMAR to submit a recovery schedule demonstrating its proposed plan to make up all lost time and complete the Project within the Contract Time. CMAR shall submit its recovery schedule within 7 calendar days of Owner's request. If Owner finds the proposed recovery schedule unacceptable, it may require CMAR to submit a revised plan or to take actions that are, in Owner's judgment, necessary to recapture lost time, including but not limited to increasing: (a) manpower; (b) the number of working hours per day; (c) the shifts per working day; (d) the number of working days per week; (e) the amount of equipment; or (f) any combination of the foregoing. CMAR's entitlement to additional compensation, if any, will be determined in accordance with the provisions of the "CHANGES" Section of the General Conditions.

8.2. SCHEDULE OF VALUES

Within 14 calendar days of the issuance of the Notice to Proceed, CMAR shall submit a proposed Schedule of Values for Owner's review and approval. The Schedule of Values shall include sufficient detail and be supported by sufficient data as Owner, in its sole discretion, may deem necessary to substantiate its accuracy and to evaluate progress at any point in the Project. The Schedule of Values shall include the general categories noted in the GMP Proposal, subdivided into their various components for the costs of trade subcontractors' services, labor, and material based when possible upon actual subcontract, purchase order, or vendor prices. Subdivisions of work should be described by easily identifiable and measurable units.

8.3. CMAR'S SUBMITTALS

- 8.3.1. General: CMAR shall submit to Owner 6 copies of all submittals required by the Contract Documents, including but not limited to: shop drawings, working drawings, descriptions of materials and equipment to be supplied, supporting information, and other submittals (collectively "Submittals"). All submittals shall be provided at CMAR's expense. CMAR shall carefully review each Submittal before delivering it to Owner. CMAR shall provide a signed, dated transmittal letter with each Submittal certifying that the Submittal is correct and in strict conformance with the Contract Documents. CMAR shall allow no less than 21 calendar days for Owner to review each Submittal. CMAR is expected to make a complete and acceptable Submittal by the second submission as to any item, and Owner reserves the right to withhold moneys otherwise due CMAR to cover additional costs of Owner's reviews beyond the second Submittal.
- 8.3.2. Owner's Review: When the Contract Documents require a Submittal, CMAR shall not furnish or fabricate any materials or equipment and shall not perform any work covered by the Submittal until Owner has reviewed, approved, and notified CMAR that Owner takes no exceptions to the Submittal. Any fabrication or other work performed in advance of receiving Owner's notice of no exceptions shall be entirely at CMAR's risk and expense. CMAR is responsible for the correctness of each Submittal. Owner's review of a Submittal shall not relieve CMAR from responsibility for any errors or omissions in the Submittal or from any performance requirements of the Contract Documents. In the transmittal letter that accompanies the Submittal, CMAR shall call to Owner's attention any deviations from the Contract Documents. CMAR shall furnish all materials and perform all work for which Submittals are required in accordance with the Submittals that Owner has reviewed and has taken no exception.
- 8.3.3. Working Drawings: Working drawings are drawings showing details not shown on the Plans, which details CMAR must design. CMAR must prepare working drawings of a sufficient size and

scale to show clearly all necessary details. CMAR shall ensure that when required by California law or the Contract Documents, working drawings are prepared by engineers holding valid professional licenses in the applicable engineering discipline.

- 8.3.4. Shop Drawings: Shop drawings are drawings showing details of manufactured or assembled products that CMAR proposes to incorporate into the work. CMAR shall submit the shop drawings required by the Contract Documents.
- 8.3.5. Supporting Information: Supporting information is information required by the Contract Documents or requested by Owner when reviewing a submittal that Owner determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by Owner to operate and maintain a manufactured product or system to be constructed as part of the work. CMAR shall submit supporting information for a system bound together and include information about all manufactured items for the system. Unless otherwise specified in the Contract Documents, supporting information shall comply with applicable requirements of the Standard Specifications and may include the following at the discretion of Owner:
- (a) List of Subcontractors;
 - (b) List of Materials;
 - (c) Manufacturer's certifications (or Certification of Compliance) that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or Owner waives materials testing requirements. Owner may require materials test data as part of the certification;
 - (d) Concrete mix designs;
 - (e) Asphalt concrete mix designs;
 - (f) Data including but not limited to catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information may be required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system;
 - (g) Pipeline layout diagrams; and
 - (h) Controller Cabinet Wiring Diagrams.

8.4. SUBSTITUTIONS – BRAND OR TRADE NAMES

- 8.4.1. Unless Owner has made a finding under Public Contract Code Section 3400(c), whenever the Contract Documents specify any materials, products, things, or services by brand, trade, or proprietary name, by patent, or by manufacturer, such specifications shall be deemed to be a measure of quality and utility or a standard and shall be deemed to be followed by the words "or equal".
- 8.4.2. If CMAR desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to Owner in writing within 35 days after the award of the Contract. CMAR shall submit to Owner 6 copies of each application for an "or equal" determination. CMAR's application shall include all information required for Owner to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.
- 8.4.3. CMAR shall have the item tested as required by Owner to determine that the quality, strength, performance, physical, chemical, or other characteristics including but not limited to durability, finish, efficiency, dimensions, service, suitability, and compatibility with Owner's operations are such that the item will be equal in quality and utility to the item specified. CMAR'S written application constitutes its representation that:

- (a) CMAR has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.
 - (b) CMAR will provide the same warranty as for the specified item.
 - (c) CMAR will coordinate installation and make such modifications, which may be required for the work to be complete in all respects, with no addition to the Contract Time or the Contract Price.
 - (d) CMAR waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such “or equal” materials, equipment, products, processes, or articles.
- 8.4.4. Owner will then determine, in its sole discretion, whether or not the proposed materials, products, things, or services are equal in quality, performance, and utility to those specified, and its decision shall be final and binding. CMAR shall not use or install any materials, products, things, or services proposed as “or equal” without Owner’s prior approval. CMAR shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by Owner. CMAR shall bear all expenses associated with its application for determination of “or equal” status.
- 8.4.5. Any request by CMAR to change materials, products, things, or services required by the Contract Documents that does not fall within the above provisions relating to Public Contract Code Section 3400 shall be considered pursuant to the “CHANGES” Section of these General Conditions. Owner will determine, in its sole discretion, whether or not to accept the requested change.

8.5. INSPECTION AND TESTING REQUIREMENTS

- 8.5.1. Materials or Equipment Subject to Testing: Materials or equipment to be incorporated into the work will be subject to inspection and tests by Owner or its designated representative. Before incorporation into the work, CMAR shall furnish without charge such samples as Owner may require.
- 8.5.2. CMAR’s Testing Responsibilities: Whenever testing is required by Owner or these Contract Documents, CMAR shall perform such testing at its expense unless otherwise specified in the Plans or Special Provisions. CMAR shall deliver materials or equipment for testing at a location in the United States unless otherwise approved by Owner. All tests shall be made by an independent testing agency or laboratory, registered with and approved by Owner for the nature of work to be examined. If any tests indicate noncompliance with the Contract Documents, all retesting shall be provided at CMAR’s expense.
- 8.5.3. Notice to Owner: CMAR shall notify Owner in writing of its intention to use materials or equipment for which tests are required as soon as such materials or equipment are available for testing. The notice shall specify the date on which CMAR intends to use the materials or equipment. The notice shall be provided so as to allow sufficient time to perform the tests, but in no event shall the notice be provided fewer than 15 days prior to CMAR’s use of the materials or equipment. If CMAR fails to use the materials or equipment on the date specified in the notice, then Owner may require retesting if Owner determines that retesting is necessary to ensure the materials or equipment do not require replacement. The date and time of any tests shall be approved by Owner. The notice shall identify the proposed supplier and source of material.
- 8.5.4. Inspection of Materials or Equipment at Source of Supply: Owner may inspect, sample, or test materials or equipment at the source of supply, manufacturing plant, or other locations as appropriate; but such inspection, sampling, or testing will not be undertaken until Owner is assured by CMAR of the cooperation and assistance of both CMAR and the supplier of the material. CMAR shall ensure that adequate facilities are furnished free of charge to make such inspections. CMAR shall ensure that Owner has free access at all times to the materials or equipment to be inspected, sampled, or tested. CMAR shall provide safety measures as necessary to protect Owner personnel or representatives from construction activities while making field tests.

- 8.5.5. Inspection of Production or Manufacturing Process: Owner may inspect the production or manufacture of materials or equipment at the source of supply. Such plant inspection, however, will not be undertaken until Owner is assured of the cooperation and assistance of both CMAR and the materials producer or equipment manufacturer. Owner or its authorized representative shall have free entry at reasonable times to such parts of the plant as concern the manufacture or production of the materials or equipment.
- 8.5.6. Inspection Does Not Guarantee Acceptance: Inspections and tests shall in no way be considered a guarantee of acceptance of such materials or equipment, nor of continued acceptance of materials or equipment presumed to be similar to that upon which inspections and tests have been made. Inspection and testing performed by Owner shall not relieve CMAR or CMAR's suppliers of responsibility for quality control or otherwise limit its warranty obligations or other obligations related to quality of work required by the Contract.
- 8.5.7. Records of Inspections: CMAR may examine reports and records of inspections that are Owner's obligation to perform when such reports and records are available at the work site.
- 8.5.8. Certificate of Compliance/Manufacturer's Certification: CMAR shall furnish a Certificate of Compliance prior to using any materials for which the Contract Documents require such a certificate. The form of the Certificate shall be as directed by Owner. As authorized by the Contract Documents, Owner may permit the use of materials or equipment accompanied by a Certificate of Compliance prior to sampling and testing. The Certificate shall be signed by the producer and shall state that the materials or equipment comply in all respects with the requirements of the Contract Documents. CMAR shall furnish a Certificate of Compliance with each lot of materials or equipment delivered to the work, and the lot so certified shall be clearly identified in the Certificate.

All materials or equipment used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that materials or equipment are used on the basis of a Certificate of Compliance shall not relieve CMAR of responsibility for using materials or equipment that conform to the requirements of the Contract Documents, and any materials or equipment not conforming to such requirements will be subject to rejection whether or not in place. Owner reserves the right to verify that supplied materials or equipment comply with the Contract Documents through inspection, testing, or any other manner as may be provided for in the Contract Documents notwithstanding receipt of a Certificate of Compliance.

- 8.5.9. Cooperation by Contractor: CMAR shall not perform work or furnish materials without obtaining inspection by the Owner. CMAR shall provide the Owner with safe means of access to the work, so the Owner can determine whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If the Owner so requests at any time before final acceptance of the work, the CMAR shall remove or uncover such portions of the finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the Owner determines that the work so exposed or examined is unacceptable, CMAR shall perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Owner. However, if the Owner determines that the work thus exposed or examined is acceptable, the Owner will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with 14.2.
- 8.5.10. Failure of Owner to Reject Work During Construction: If, during or prior to construction operations, the Owner fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Owner to final acceptance. The Owner is not responsible for losses suffered due to any necessary removals or repairs of such defects.
- 8.5.11. Failure to Remove and Renew Defective Materials and Work: If the CMAR fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary

repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Owner has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the CMAR's expense. The Owner will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the CMAR fails or refuses to make, by deducting such expenses from any moneys due or which may become due the CMAR, or by charging such amounts against the Contract bond.

- 8.5.12. Corrections for Construction Errors: For work that the CMAR constructs incorrectly or does not meet the requirements of the Contract Documents, the CMAR has the prerogative to submit an acceptance proposal to the Owner for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on Contract Time. The Owner will judge any such proposal for its effect on these criteria and also for its effect on Contract Administration.

When the Owner judges that a proposal infringes on the structural integrity or maintainability of the structure, the CMAR's Engineer of Record will perform a technical assessment and submit it to the Owner for approval. The CMAR shall not take any corrective action without the Owner's written approval. The CMAR shall carry out all approved corrective construction measures at no expense to the Owner.

Notwithstanding any disposition of the compensation aspects of the defective work, the Owner's decision on the technical merits of a proposal is final.

9. PAYMENTS

9.1. PAYMENT REQUIREMENTS

- 9.1.1. Form and Contents of Applications for Payment: CMAR must submit applications for payment on a form approved by Owner.

Each application for payment must include:

- (a) A current Schedule of Values (when requested) and monthly Schedule Update with a narrative report, all approved in writing by Owner and all developed in accordance with the "SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS" Section of the General Conditions. CMAR's submissions of an Accepted Project Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to Owner's processing of applications for payments;
- (b) Photographic documentation of completed work (if requested);
- (c) If requested, CMAR shall provide three copies of certified payrolls from CMAR and all Sub-consultants and Subcontractors for the period covered by the application for payment, with one copy having all pertinent information visible and two copies having the workers' names, addresses, and social security numbers blacked out;
- (d) Evidence satisfactory to Owner that CMAR is fulfilling its obligations under the Contract Documents with respect to preparing daily reports and maintaining up-to-date As-Built Plans;
- (e) Conditional waivers and releases on progress payment or final payment (as applicable) from CMAR, those Subcontractors of any tier, and those suppliers claiming funds covered by the application for payment, and unconditional waivers and releases on progress payment or final payment from CMAR, those Subcontractors of any tier, and those suppliers who received funds through the preceding applications for payment, all in the form prescribed by Civil Code Sections 8120 through 8138; and
- (f) Any other administrative documentation as agreed upon.

The application for payment shall show the total value of work completed or partially completed as of the date of submission of the application for payment. At Owner's sole discretion, the value

of the work completed may include up to 50% of the value, as determined by Owner, of: (i) material delivered to the Project site and not yet incorporated into the construction; and/or (ii) materials delivered to CMAR and stored at locations other than the Project site, provided that CMAR furnishes Owner satisfactory evidence that CMAR has acquired title to the materials, the materials will be used on the Project, the materials are properly stored at a secure off-site location acceptable to Owner, and the materials at each storage location are segregated from any other materials there that are not intended for use on the Project. Owner will not pay CMAR for any materials at the Project site that are furnished but are not to be incorporated into the work.

Owner reserves the right to adjust a payment application if a prior payment application is determined to have been overstated or understated.

- 9.1.2. Lump Sum Work and Unit Prices: Owner shall pay for work shown on the GMP Proposal as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Work for which the GMP Proposal shows a unit price will be paid for at the actual quantities constructed in accordance with the Contract Documents, not at the quantities shown in the GMP Proposal. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the GMP Proposal, the unit price stated in the GMP Proposal will apply unless a change to the unit price is warranted under the "CHANGES" Section of the General Conditions.
- 9.1.3. Allowances: Payment for any Allowance identified in the GMP Proposal shall be for direct cost reimbursement only, unless the GMP Proposal identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for Allowances based on T&M pricing shall be proposed by CMAR subject to Owner's acceptance using the same criteria and proposal breakdown as that specified in the "Time-and-Materials Change Orders" subsection of the "CHANGES" Section of the General Conditions. Any work to be performed in connection with any Allowance identified in the GMP Proposal must first be approved in writing by Owner. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the Contract consistent with "CHANGES" Section of the General Conditions, but in such event there shall be no markup for overhead and profit on the additional actual costs. Upon completion of the Project, each Allowance will be corrected for unused balances and a credit to the Contract Price will be issued by Change Order to reflect the actual sums authorized for work as Allowance items.
- 9.1.4. Time for Submitting and Reviewing Applications for Payment: CMAR shall submit each application for payment to Owner for its review on the last business day of the month for which it is seeking payment. Owner will review the application for payment as soon as practicable and, no later than 7 days after receiving it or as provided by Public Contract Code Section 20104.50, will return to CMAR any application for payment that Owner determines is not a proper application for payment suitable for payment along with a written explanation of the reasons why the application for payment is not proper. The grounds on which the Owner may conclude the application for payment is not proper and not suitable for payment include, but are not limited, to: (i) the application is missing documents required under the preceding Section "Form and Contents of Applications for Payment"; (ii) the application does not accurately reflect the progress of the work; (iii) the quality of the work is not in conformance with the requirements of the Contract Documents; (iv) CMAR has failed to remedy defective work; (v) there are third party claims filed against Owner arising out of CMAR's work; (vi) CMAR has failed to make payments properly to subcontractors and suppliers; (vii) CMAR has damaged Owner's property or the work by or property of Owner's separate CMARs; (viii) CMAR has repeatedly failed to carry out the work in accordance with the Contract Documents; or (ix) there is reasonable evidence that CMAR will not complete the work within the Contract Time and that the unpaid balance of the Contract Price would not be adequate to cover the Liquidated Damages for the anticipated delay.

- 9.1.5. Progress Payments: Within 30 days of receiving an undisputed, properly completed application for payment, or as provided by Public Contract Code Section 20104.50, Owner shall pay to CMAR a sum equal to 95% of the value of the work completed since the commencement of the work, less all previous payments. Owner shall hold 5% of the value of the work completed as Retention until the Retention Payment is made pursuant to Public Contract Code Section 7107. CMAR may be entitled to interest pursuant to Public Contract Code Section 20104.50 if Owner fails to timely make any progress payment. No progress payment by Owner shall be considered to be Owner's acceptance of any part of the work.
- 9.1.6. Retention Payment: Payment of the Retention amount will be made in accordance with Public Contract Code Section 7107. If the Retention Payment is made before CMAR has complied with all of its obligations under the Contract, then payment of Retention shall not be interpreted as Final Payment, and shall not relieve CMAR of its obligations under the Final Payment provisions.
- 9.1.7. Final Payment: The Final Payment, if unencumbered, or any part thereof unencumbered, shall be made no later than 60 days after CMAR completes the work and submits an application for Final Payment in proper form and suitable for payment. CMAR's work will not be complete until CMAR has delivered: (i) As-Built Plans suitable for use in preparing a reproducible set of record drawings for the Project; (ii) all operations and maintenance manuals; (iii) manufacturers', suppliers', and installers' warranties, guarantees, instruction sheets, and parts lists; and (iv) any other documents or information required by the Contract Documents as a condition to completion of the work.

CMAR's application for Final Payment shall include:

- (a) CMAR's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied by CMAR; and
 - (b) Conditional waivers and releases on Final Payment in the form prescribed by Civil Code Section 8136 from CMAR, its Subcontractors of any tier, and its suppliers who will receive funds from the Final Payment, listing with specificity any and all claims under or arising out of the Contract or the Project that remain unsettled.
- 9.1.8 Partial Payments for Delivery of Certain Materials: The Owner will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

- (a) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
- (b) The stockpiled material must be approved as meeting applicable specifications.
- (c) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
- (d) The CMAR shall submit to the Owner certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material.
- (e) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
- (f) Partial payments will not be made for materials, which were stockpiled prior to award of the Contract for a project.

9.2. SUBSTITUTED SECURITY

In accordance with Public Contract Code Section 22300 and at the request and expense of CMAR, prior to the award of the contract, Owner will accept securities equivalent to any amount withheld by Owner to ensure complete and proper performance under the Contract Documents, including the amount withheld as Retention under the "PAYMENTS" Section of the General Conditions. Substituted securities must meet the requirements of Public Contract Code Section 22300 and shall be deposited with Owner or with a California or federally chartered bank in California as escrow agent. The securities shall be held by the escrow agent subject to a written escrow agreement between Owner, CMAR, and escrow agent, which agreement shall be in a form substantially similar to that contained in Public Contract Code Section 22300.

9.3. WAIVER OF CLAIMS

Unless a shorter time is specified elsewhere in the Contract, on or before making its application for Final Payment, CMAR shall submit to Owner in writing all claims for compensation under or arising out of this Contract. CMAR's acceptance of Owner's payment in response to CMAR's application for Final payment shall constitute a waiver of all claims against Owner under or arising out of this Contract except those previously made in writing and identified by CMAR as unsettled at the time of CMAR's application for Final Payment.

10. LABOR CODE REQUIREMENTS

CMAR and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of the Contract, including but not limited to the following:

10.1. WAGE RATES

CMAR and any Subcontractor(s) shall comply with the provisions of California Labor Code Sections 1771 et seq. and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. CMAR shall post all job site notices as required by Labor Code Section 1771.4(a), including a copy of these wage rates for each craft, classification, or type of worker needed in the performance of this Contract. Copies of these rates are on file at the principal office of Owner's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, CMAR and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

10.2. WAGE RATE PENALTY

CMAR and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. CMAR and any Subcontractor(s) shall be subject to a penalty in an amount up to \$200, or a higher amount as provided by Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done by the CMAR or Subcontractor(s) under the Contract.

10.3. WORK HOUR PENALTY

As provided by Labor Code Section 1810, 8 hours of labor shall constitute a legal day's work, and 40 hours shall constitute a legal week's work. The time of service of any worker employed under the Contract shall be restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as provided herein. CMAR shall forfeit to Owner \$25, or a higher amount as provided by Labor Code Section 1813, for each worker employed in the performance of this Contract by CMAR or by any Subcontractor(s) for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except as provided by Labor Code Section 1815.

10.4. REGISTRATION OF CMARS

CMAR and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of CMARs pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.

10.5. PAYROLL RECORDS

CMAR and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- 10.5.1. CMAR and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CMAR or any Subcontractor(s) in connection with the work.
- 10.5.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (a) The information contained in the payroll record is true and correct.
 - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 10.5.3. The payroll records shall be certified and shall be available for inspection at the principal office of CMAR on the basis set forth in Labor Code Section 1776.
- 10.5.4. CMAR shall inform Owner of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 10.5.5. Pursuant to Labor Code Section 1776, CMAR and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that CMAR or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to Owner, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. CMAR acknowledges that, without limitation as to other remedies of enforcement available to Owner, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due CMAR. CMAR is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.

10.6. APPRENTICES

- 10.6.1. Unless the Contract involves a dollar amount less than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Section 1777.5. CMAR shall comply with Labor Code Section 1777.5 for all apprenticeable occupations.
- 10.6.2. CMAR and all Subcontractor(s) shall comply with Labor Code Section 1777.6, which forbids discriminatory practices in the employment of apprentices on any basis listed in Government Code Section 12940 (described in the "NONDISCRIMINATION" Section of the General Conditions), except as provided in Labor Code Section 3077.
- 10.6.3. CMAR shall comply with all requirements of California Public Contract Code Section 22164 (c) regarding the use of a skilled and trained workforce.

11. NONDISCRIMINATION

In the performance of the Contract, CMAR shall neither engage in nor permit its Subcontractors to engage in discrimination against any employee or applicant for employment on any basis listed in California Government Code Section 12940, including but not limited to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as those bases are currently defined in Government Code Sections 12926 and 12926.1, or as they may be modified. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.

12. WARRANTY / GUARANTEES

12.1. WARRANTY

CMAR warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers' and installers' warranties; that construction will be of good and workmanlike quality; and that all of the work shall be performed in strict conformance with the requirements of the Contract Documents, industry standards, and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by CMAR or its Subcontractors, improper operation or maintenance, or normal wear and tear.

12.2. TWO YEAR CORRECTION PERIOD

For a period of not less than two (2) years from the date Owner accepts CMAR's work, as evidenced by a Notice of Completion issued by Owner, CMAR shall take immediate action to correct any Defective Work reported by Owner orally or in writing. CMAR shall initiate corrective action on Defective Work affecting use of a facility, safety, or preservation of property within twenty-four (24) hours after notification. CMAR shall initiate corrective action on other Defective Work within ten (10) calendar days after notification. If CMAR fails to initiate corrective action within the specified times or fails to complete the corrective work within a reasonable time, Owner may take whatever corrective action it deems necessary. All costs incurred by Owner because of CMAR's failure to correct Defective Work during the two-year correction period shall be due and payable immediately by CMAR. The two-year correction period relates only to the specific obligation of CMAR to return to the Project site and correct Defective Work. The two-year correction period does not establish a period of limitations with respect to any of CMAR's other obligations under the Contract Documents, including but not limited to CMAR's warranty, and it has no relationship to the time within which Owner may seek to enforce the CMAR's obligation to comply with the Contract Documents or to the time within which proceedings may be commenced to establish the CMAR's liability with respect to any of the CMAR's obligations.

12.3. MANUFACTURERS' AND INSTALLERS' WARRANTIES

All manufacturers' and installers' warranties received by CMAR shall be assignable to Owner, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to

Owner. CMAR shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of Owner and shall take no action that would impair Owner's rights under any such warranties. Before Owner's acceptance of the work, CMAR shall deliver to Owner manufacturers' and installers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the work.

12.4. SURVIVAL

All of CMAR's warranty obligations shall survive abandonment, termination, and completion of the Contract. Neither Final Payment nor any other provision in the Contract Documents shall constitute Owner's acceptance of work not performed in accordance with the Contract Documents nor relieve CMAR of liability with respect to its warranty obligations or for Defective Work.

13. PERFORMANCE

13.1. OTHER CONTRACTS

Owner may undertake or award other contracts for simultaneous, collateral, or additional work adjacent to or within the work site. CMAR shall fully cooperate with such other Owner representatives, and carefully fit CMAR's own work to such other work as may be directed by Owner. CMAR shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, or additional work by others. CMAR shall not commit or permit any act that will interfere with the performance of work by Owner or any other CMAR, and shall cooperate in the coordination of its separate activities in a manner that shall not interfere with Owner's current facility operations and the activities of other CMARs working in the area. CMAR shall include in its GMP Proposal all costs involved as a result of coordinating its work with others. If necessary for coordination purposes, CMAR shall redeploy its forces to other parts of the work.

13.2. PROTECTION

- 13.2.1. CMAR shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. CMAR shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety and Health. CMAR shall also be responsible for all materials delivered and work performed until completion and acceptance of the Project, except for any completed unit of construction that Owner may have previously accepted.
- 13.2.2. CMAR shall maintain continuously adequate protection of all work from damage and shall protect Owner's personnel, invitees, and property from damage, injury, or loss arising in connection with this Contract. CMAR shall make good any such damage, injury, or loss. CMAR shall adequately protect adjacent property and shall maintain reasonable security of the site at all times. CMAR shall limit visitors to the site to those necessary for construction and inspection. Visitors for other purposes shall be referred to Owner. CMAR's and Subcontractors' employees shall possess means of identification at all times as required by Owner while on the job site.
- 13.2.3. Owner may notify CMAR of any noncompliance with the foregoing provisions and the action to be taken. CMAR shall, after receipt of such notice, immediately correct such conditions. Such notices shall be deemed sufficient for said purpose when delivered to CMAR or CMAR's representative at the work site. Failure of receipt of such notice from Owner shall not relieve CMAR of responsibility for safety.
- 13.2.4. If CMAR fails or refuses to comply promptly, Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or additional compensation to CMAR. CMAR will be responsible for ensuring that CMAR's Subcontractors and suppliers comply with the provisions of this Section.
- 13.2.5. In an emergency affecting the safety of persons, the work, or of adjoining property, CMAR without special instruction or authorization from Owner, is hereby permitted to act at CMAR's discretion to prevent such threatened loss or injury. CMAR shall so act if directed by Owner.

Any claim for additional compensation by CMAR on account of emergency work shall be determined as set forth in the "CHANGES" Section of these General Conditions.

13.3. FENCES AND BARRICADES

- A. Furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessary until completion of the project.
- B. Barricades to protect public from construction shall be sturdy, stable and robust and shall be free from projecting nails, boards or other hazards. The CMAR shall maintain barricades free from graffiti.
- C. No signs, other than those specified, shall be erected without the written approval of the Owner.
- D. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.

13.4. PROJECT SIGN & NOTICE

- A. No signs or advertisements will be permitted on the Project site, unless otherwise approved by the Owner's Project Manager.
- B. CMAR (if required) shall furnish and install five 4 foot by 8 foot Project signs to be located at the Project site and shall contain the information as described in OCPW Std. Plan 1418.
- C. CMAR shall submit sign layout and proposal exact location for review and approval by the Owner's Project Manager.

13.5. QUALITY OF MATERIALS AND WORKMANSHIP

- 13.5.1. CMAR shall perform all work required by the Contract Documents in a skillful, good, and workmanlike manner and in strict conformance with the Contract Documents. All materials and equipment furnished by CMAR shall be new and of good quality, unless otherwise required by the Contract Documents.
- 13.5.2. CMAR shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals specially skilled in the kind of work required. CMAR shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. CMAR shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. CMAR shall immediately remove from the Project any person that Owner determines, in its sole discretion, is unfit or behaving in an unsatisfactory or unacceptable manner. Persons so removed shall not thereafter be reassigned to any portion of the Project without Owner's written approval, which may be granted or withheld in Owner's sole discretion.
- 13.5.3. CMAR shall, without charge, replace any material or correct any work found by Owner not to conform to the requirements of the Contract Documents, unless Owner consents to accept such material or work along with a commensurate reduction in the Contract Price. CMAR shall promptly segregate and remove rejected material from the work site.
- 13.5.4. If CMAR does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, Owner may: (1) by contract or otherwise replace such material or correct such work and charge the cost thereof to CMAR, including but not limited to by deducting the cost from amounts due or to become due to CMAR; or (2) terminate CMAR's right to proceed in accordance with the "TERMINATION FOR CAUSE" Section of the General Conditions.

13.6. SURVEYING

- 13.6.1. CMAR shall notify Owner at least 7 days before starting work to allow for the preservation of survey monuments, lot stakes, and benchmarks. CMAR shall not disturb survey monuments, lot

stakes, or benchmarks without the consent of Owner, and shall bear the expense of replacing any that may be disturbed without such consent. Replacement shall be done only under the direction of Owner by a Registered Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within the State. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, CMAR shall adjust the monument cover to the new grade within 7 days of finished paving unless otherwise instructed by Owner. CMAR shall preserve construction survey stakes and marks for the duration of their usefulness, and will bear the expense of any survey stakes that are lost or disturbed and need to be replaced.

- 13.6.2. CMAR shall notify Owner in writing at least 7 days before survey services will be required in connection with the laying out of any portion of the work. CMAR shall dig all holes necessary for line and grade stakes. Unless otherwise specified in the Contract Documents, stakes will be set and stationed by Owner for curbs, headers, sewers, storm drains, structures, and rough grade. A corresponding cut or fill to finished grade (or flowline) will be indicated on a grade sheet.
- 13.6.3. All work shall conform to the lines, elevations, and grades shown on the Plans. Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to Owner. In the absence of such report, CMAR shall be responsible for any error in the grade of the work. Grades for underground conduits will be set at the surface of the ground. CMAR shall transfer them to the bottom of the trench.
- 13.6.4. Surveying by CMAR shall conform to the quality and practice required by Owner.

13.7. UTILITIES

- 13.7.1. Location: CMAR shall determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its operations. Unless otherwise specified in the Contract Documents, costs associated with complying with the requirements of this Section shall not entitle CMAR to additional compensation under the "CHANGES" Section of the General Conditions. Pursuant to Government Code Sections 4216 et seq., CMAR shall contact the appropriate regional notification center(s) and shall obtain an inquiry identification number at least 2 working days, but not more than 14 calendar days, prior to commencing any excavation.
- 13.7.2. Protection: CMAR shall not interrupt the service function or disturb the support of any utility without authority from the utility owner or direction from the Owner. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Plans or in the Special Provisions, CMAR shall furnish and place the necessary protection at its expense unless otherwise provided in the Contract Documents. Permanent improvements installed in proximity to any utilities shall be constructed in a manner that will not impair the physical integrity, use, or ongoing maintenance of those utilities.
- 13.7.3. Removal: Unless otherwise specified in the Contract Documents, CMAR shall remove all interfering portions of utilities represented in the Plans or Special Provisions as "abandoned" or "to be abandoned in place." Before starting removal operations, CMAR shall ascertain from Owner whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the GMP Proposal for the items of work necessitating such removals.
- 13.7.4. Relocation: When feasible, the responsible utility owners will complete their necessary installations, relocations, repairs, or replacements before commencement of the work by CMAR. When the Plans or Special Provisions indicate that a utility installation is to be relocated, altered, or constructed by others, CMAR will conduct all negotiations with the owners and utility work will be done at no cost to the Owner, except as otherwise specified in the Contract Documents. Utilities that are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the GMP Proposal for the items of work

necessitating such relocation. Owner may order changes in the work to avoid interference as provided by the "CHANGES" Section of these General Conditions. When the Contract Documents provide for CMAR to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the GMP Proposal for the items of work necessitating such alteration, relocation, or reconstruction. Temporary or permanent relocation or alteration of utilities requested by CMAR for its convenience shall be its responsibility and CMAR shall make all arrangements and bear all costs.

- 13.7.5. Relocation of Service Connections: The CMAR shall arrange for the utility owners to relocate service connections as necessary within the limits of the work or within temporary construction or slope easements. When directed by Owner, CMAR shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Unless, otherwise specified in the Contract Documents, payment for the relocation of such service connections shall be in accordance with the "CHANGES" Section of these General Conditions, and will include the restoration of all existing improvements which may be affected thereby. CMAR may agree with the owner of any utility to disconnect and reconnect interfering service connections, and Owner will not be involved in any such agreement.
- 13.7.6. Notice: CMAR shall notify Owner of its schedule insofar as it affects the protection, removal, or relocation of utilities.
- 13.7.7. Cooperation: When necessary, CMAR shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the work.
- 13.7.8. Utility: Facilities on Project Site: If CMAR discovers unidentified utilities, CMAR shall immediately notify Owner and the utility owner in writing. Pursuant to Government Code Section 4215, CMAR shall be compensated for the costs of locating and repairing damage not due to failure of CMAR to exercise reasonable care, and of removing or relocating main or trunk line utilities located on the site and not identified in the Contract Documents with reasonable accuracy. Such compensation shall also cover the cost of CMAR's equipment necessarily idled during such work. CMAR shall not be assessed Liquidated Damages for delay in completion of the work if such delay was caused by the failure of the utility owner to provide for removal or relocation of such utilities. This provision shall not be deemed to require compensation or excuse of Liquidated Damages when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes on or adjacent to the construction site.
- 13.7.9. Increase of Contract Time: CMAR shall not be entitled to additional time or compensation for delays attributable to utility relocations or alterations if such utility relocations or alterations are correctly located, noted, and completed. CMAR may be entitled to an extension of the Contract Time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly represented in the Plans or Special Provisions. CMAR will assume responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities within the area affected by the work if such utilities are not identified in the Contract Documents.

13.8. SPACE AT SITE

CMAR shall identify and acquire reasonable space at the work site and shall confine CMAR's operations to the assigned space.

13.9. OPERATING HOURS AND SITE ACCESS

Unless otherwise specified in the Contract Documents, normal operating hours are from 7:00 A.M. to 4:00 P.M. Work performed outside normal operating hours will require Owner's written approval.

13.10. TRAFFIC CONTROL

- 13.10.1. CMAR shall coordinate its traffic at the site with Owner. When a Traffic Control Plan (TCP) is required by the Contract Documents, CMAR shall submit an acceptable plan to Owner within 10 days after the Notice to Proceed is issued.

The Temporary Traffic Control Plan shall be prepared by a Traffic Engineer prior to any work performed and must be prepared according to requirements in the 2014 California Manual on Uniform Traffic Control Devices (CAMUTCD). The traffic control plan shall be signed and sealed (wet-stamped) by a State of California registered Traffic Engineer. However, with a prior approval from the Owner, a plan prepared, signed and sealed by a registered Civil Engineer may be acceptable.

The CMAR shall prepare plan sheets, notes, and details to include the following: typical section sheet(s), general notes and construction sequence sheet(s), typical detail sheet(s), traffic control plan sheet(s).

The CMAR shall prepare additional plan sheets such as detours, cross sections, profiles, drainage structures, temporary roadway lighting, retaining wall details, and sheet piling as necessary for proper construction and implementation of the Temporary Traffic Control Plan.

The TCP shall display and address, at a minimum:

- (a) Protection of existing improvements;
 - (b) Maintaining access by Owner operations;
 - (c) Methods to eliminate interference with existing facility operations and traffic in and out of the facility and operations area;
 - (d) Proposed haul routes for delivery of materials;
 - (e) Maximum speeds for each class of vehicle on each type of terrain, but in no event to exceed 15 mph on shared access roads and any crossing areas;
 - (f) Access to work areas; and
 - (g) CMAR's and Subcontractors' staging and material storage areas, including fuel storage procedures.
 - (h) All motor-driven equipment using fuel shall have spark arresters.
- 13.10.2. Traffic Control Restrictions: There will be no lane closures allowed between the hours of 4:00 P.M. to 7:00 A.M. A lane may only be closed during active work periods. There will be no paving operations allowed between the hours of 4:00 P.M. to 7:00 A.M. There will be no detours allowed between the hours of 4:00 P.M. to 7:00 A.M. All lane closures, including ramp closures, must be reported to the local emergency agencies, the media and the Owner public information officer. Also, the CMAR shall develop the Project to be able to provide for all lanes of traffic to be open in the event of an emergency.
- 13.10.3. Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If Owner determines that CMAR has violated the Traffic Control Plan or otherwise operated in an unsafe manner, Owner may suspend or prohibit the equipment operator(s) from any further work at the site. Repeated or severe incidents demonstrating the failure of CMAR to operate its vehicles safely shall constitute a material breach of this Contract and Owner may terminate CMAR's right to proceed with the work pursuant to the "TERMINATION FOR CAUSE" Section of the General Conditions.

13.11. TEMPORARY OFFICE BUILDING AND TELEPHONE

CMAR shall provide a temporary office building and telephone, if required for the Project. The temporary building shall be Class A and be provided by the CMAR in accordance with SSPWC Section 8 - Facilities for Agency Personnel. The trailer shall be located as shown in the Plans and/or as directed by Owner.

13.12. TEMPORARY UTILITIES

CMAR shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation.

13.13. SANITARY UNIT

CMAR shall provide temporary toilets for CMAR's use. CMAR will maintain and service them in a sanitary condition through the construction of the Project.

13.14. WATER

CMAR shall furnish all water needed for the Project, including but not limited to potable (drinking) and construction/dust suppression water, unless otherwise specified in these Contract Documents.

13.15. FIRE EXTINGUISHER

CMAR shall provide fire extinguishers suitable for the Project and consistent with the factors enumerated in Title 19 of the California Code of Regulations, Section 565. These extinguishers shall be placed at strategic locations around the working area and kept accessible for use in case of fire. CMAR shall keep fire extinguishers in working order and shall remove them from the site at the end of construction.

13.16. STORAGE AND WORKING SPACE

CMAR shall identify, acquire, obtain approval by Owner, and specify on Contract Documents material storage and working space. Locations for CMAR to store CMAR's equipment will be agreed upon during the pre-construction meeting.

13.17. TRANSPORTATION AND HANDLING OF PRODUCTS

CMAR shall:

- 13.17.1. Transport and handle products in accordance with manufacturer's instructions and applicable regulations;
- 13.17.2. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged; and
- 13.17.3. Provide equipment and personnel to handle products by methods to prevent damage.

13.18. STORAGE AND PROTECTION OF PRODUCTS

CMAR shall:

- 13.18.1. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
- 13.18.2. Store sensitive products in weather-tight, climate-controlled enclosures;
- 13.18.3. Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;
- 13.18.4. Store fabricated products on sloped supports above ground if such products are stored outdoors;
- 13.18.5. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
- 13.18.6. Provide equipment and personnel to store products by methods to prevent damage;
- 13.18.7. Arrange storage of products to permit access for inspections; and

13.18.8. Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

13.19. REMOVAL OF TEMPORARY FACILITIES

CMAR shall remove temporary toilets, storage sheds, and other facilities of a temporary nature from the Project site as soon as Owner determines progress of the work permits. CMAR shall recondition and restore portions of the site occupied by temporary facilities to a condition acceptable to Owner.

13.20. REGULATORY COMPLIANCE REQUIREMENTS

13.20.1. Permits

- (a) CMAR shall identify and obtain all permits necessary for the Project, including: permits, licenses, and certifications, including but not limited to all trade-related permits; permits required for environmental protection; construction permits; encroachment permits; permits required for the operation and storage of any equipment or regulated hazardous materials brought onsite; and permits required for dispensing and storing petroleum-related products. If necessary for the Project, CMAR shall obtain and submit to Owner a California Occupational Safety Health Agency (Cal-OSHA) Excavation Permit. CMAR shall be responsible for ensuring that all other permits necessary to complete the Project are in place consistent with federal, State, and local laws and regulations. Costs and fees associated with said permits, regardless of whether obtained by Owner, CMAR, or any other entity, shall be borne solely by the CMAR. If Owner incurs costs related to such permits, then Owner shall deduct such costs from any funds due or to become due to CMAR.
- (b) CMAR shall comply with the regulations or requirements of all permits, licenses, certifications, and regulations governing the Project. Any act or omission by CMAR that causes either Party to be in violation of any permit, licenses, certification, or regulation shall be deemed a material breach of this Contract by CMAR. Owner reserves the right to perform itself or through other CMARs any work necessary to correct any violation or to bring the Project into compliance with any permit, license, certification, or regulation, and shall deduct the cost of such work from any funds due or to become due to CMAR.
- (c) CMAR shall maintain, at its job site office, copies of all permits, licenses, and certifications required for or governing the Project, including, as applicable, permits and approvals issued to Owner by the State Water Resources Control Board; the South Coast Air Quality Management District (“SCAQMD”) for dust control; and the SCAQMD and Local Enforcement Agency for refuse excavation.

13.20.2. CMAR Compliance with Applicable Law and Regulations: CMAR shall comply with all federal, State, County, and local codes, ordinances, regulations, and standards applicable to the Project. CMAR shall comply with all current regulatory criteria and standards. CMAR shall not be entitled to any additional compensation for work necessary to comply with legal or regulatory requirements effective at the time of bid opening.

13.20.3. Archaeological/Paleontological Resources

Owner may engage the services of an Archaeologist/Paleontologist (“A/P”) to monitor all or portions of the work.

- (a) The Contract Documents may require CMAR to retain an A/P. In such event, the following conditions apply:
 - (i) A/P shall be acceptable to Owner. A/P can be selected from Owner’s list available at www.ocplanning.net/building/plan/forms under the “Archaeologist and Paleontologist” section. Regardless of whether A/P is selected from Owner’s list, A/P shall meet all

- minimum qualifications listed in the “Qualifications for Certification of Archaeological and Paleontological Professionals” document provided at that website.
- (ii) CMAR shall submit the qualifications and references of A/P to Owner for verification at least 10 working days prior to any excavation or grading work. A/P shall be approved in writing by Owner at least 5 working days prior to the start of any excavation or grading work.
 - (iii) Unless otherwise agreed to in writing by Owner, A/P shall not be an employee of CMAR, any subcontractor currently under contract by CMAR (for any job), or any supplier to any project awarded or contracted to CMAR.
 - (iv) CMAR shall be compensated for all A/P expenses including all labor, materials, tools, equipment, and incidentals necessary for accomplishing the work in accordance with the Item(s) identified for A/P services in the GMP Proposal or, if not listed there, in accordance with the “CHANGES” Section of the General Conditions.
 - (v) A/P shall report exclusively to Owner. Owner may terminate the services of A/P at any time and at Owner’s sole discretion, with no justification necessary to CMAR, and CMAR shall replace A/P with another individual or firm meeting the requirements of this Section. Under no circumstances will A/P’s termination entitle CMAR to any additional time or payment under the “CHANGES” Section of these General Conditions.
 - (vi) All other provisions of this Section apply whether A/P is retained by Owner or by CMAR, and CMAR shall ensure that A/P complies with the provisions of these Contract Documents pertaining to A/P services.
- (b) CMAR shall cooperate with all A/P personnel. If A/P directs CMAR to suspend or stop work in a particular area, CMAR shall abide by such request immediately and not resume work until directed by Owner.
- (c) The A/P shall:
- (i) Conduct a literature and records search for recorded sites and previous surveys;
 - (ii) Conduct a field survey unless the entire work site has been previously surveyed and the survey documentation is acceptable to Owner;
 - (iii) Attend the pre-construction meeting to conduct or schedule separate pre-construction cultural and paleontological resources sensitivity training, and attend additional meetings or provide training as determined necessary by Owner. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by Owner;
 - (iv) Conduct pre-construction cultural and paleontological resources sensitivity training for all staff involved in moving soil or working near soil disturbance. Training shall review the types of archaeological and paleontological resources that might be found, along with laws for the protection of the resources;
 - (v) If determined necessary by the A/P and approved by Owner, the A/P shall prepare a report on a subsurface test level investigation of archaeological resources collection or pre-grade paleontological salvage operation. The report shall evaluate the site including the significance of any finds (location, depth, nature, condition, and extent of the artifacts or specimens), recommended methodology of salvage or mitigation and related cost estimates, and an analysis and catalogue of artifacts or specimens;
 - (vi) Establish procedures for A/P sampling and resource surveillance and monitoring;
 - (vii) In cooperation with Owner, establish procedures for suspension or redirection of work to permit sampling, identification, and evaluation of possible resources.

- (viii) During grading, excavation, or other ground-disturbing activities, if any evidence of paleontological, pre-historic, or historic cultural resources is uncovered, the following measures, unless otherwise specified in regulatory permit language, shall be taken:
 - (A) All below grade work shall stop within a 100-foot radius of the discovery. Work shall not continue until the discovery has been evaluated by the A/P.
 - (B) The A/P shall assess the find(s) and determine if they are of value. If the find(s) are of value then:
 - (1) The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
 - (2) A/P shall prepare all potential finds in excavated material to the point of identification.
 - (3) Significant finds shall be preserved as determined necessary by the A/P.
 - (4) Excavated finds shall be offered to Owner or its designee for curation on a first-refusal basis, then offered to a local museum or repository willing to accept the resource.
 - (5) Within 30 working days of completion of the end of earth moving activities, the A/P shall draft a report summarizing the finds, and shall include the inspection period, an analysis of any resources found, and the present repository of the items.
 - (6) All resulting reports shall be delivered to Owner and filed with the South Central Coastal Information Center at the California State University, Fullerton, or another institution if directed by Owner.
- (d) If CMAR uncovers any burial grounds or remains, ceremonial objects, petroglyphs, or archaeological, paleontological, or other artifacts or specimens of like nature within the construction area, CMAR shall immediately notify the Owner's onsite representative of CMAR's finds and shall modify the construction operations so as not to disturb the finds pending further instructions from Owner.
- (e) Discovery of human remains:
 - (i) In accordance with Section 7050.5 of the California Health and Safety Code, if human remains are found, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County of Orange Sheriff-Coroner and/or other applicable coroner and law enforcement agency ("Coroner's Office") has determined the appropriate treatment and disposition of the human remains. The Coroner's Office shall be notified within 24 hours of the discovery.
 - (ii) If the Coroner's Office determines that the remains are or are believed to be of Native American origin, the Coroner's Office will notify the California Native American Heritage Commission (NAHC).
 - (iii) In accordance with Section 5097.98 of the California Public Resources Code, the NAHC must notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall be granted access to the site to complete their inspection as quickly as possible. The designated Native American representative would then determine, in consultation with Owner, the treatment and disposition of the human remains.
- (f) Should the finds, or notification of finds, result in delays or extra work, payment will be allowed in accordance with the "Changed Conditions" subsection of the "CONDITIONS AFFECTING THE WORK" Section of these General Conditions. However, CMAR shall not

- be entitled to damages, additional payments, or extensions of time where the CMAR could have avoided delays by any reasonable means.
- (g) Unless otherwise required by law, any and all finds shall remain the property of Owner and not become the property of any other person or entity.

13.20.4. Surface Water Protection

- (a) Work at is subject to the requirements of the National Pollutant Discharge Elimination System ("NPDES") storm water regulations, specifically to Construction General Permit ("CGP") Order No. 2012-0006-DWQ as indicated in the Special Provisions. NPDES regulations require the implementation of an IGP Stormwater Pollution Prevention Plan ("IGP SWPPP") and may additionally require a CGP Stormwater Pollution Prevention Plan ("CGP SWPPP") in conjunction with work at such sites.
- (b) Where the nature and location of the work require compliance with the CGP, CMAR is responsible for preparing and implementing a CGP SWPPP. Copies of the CGP and related documents may be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.
- (c) Additionally, in a letter dated August 31, 2011, the Santa Ana Regional Water Quality Control Board issued a Water Quality Standards Certification pursuant to the federal Clean Water Act ("CWA") (also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.), Section 401. The Certification requires that discharge from the Project will comply with CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). The discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that Have Received Water Quality Certification."

13.20.5. Preparation of CGP SWPPP

- (a) Where the nature and location of the work requires CMAR to comply with the CGP, CMAR shall develop a CGP SWPPP in accordance with the CGP and include references to the California Stormwater Quality Association ("CASQA") Stormwater Best Management Practices ("BMPs") Handbook for BMPs to be implemented during the course of construction. By submitting its GMP Proposal, CMAR represents having read and understood the requirements of the CGP. Although CMAR is required to prepare and submit a SWPPP, CMAR will not be required to prepare and submit Permit Registration Documents (PRDs) for the Project site. Additionally, CMAR will not be required to submit any CGP-required documentation to SMARTS. CMAR shall submit to Owner all CGP-required documentation (e.g., inspection reports, rain event action plans, monitoring reports, annual reports, site photos, and SWPPP amendments) and CMAR may not proceed with any earth-disturbing work prior to Owner's approval of the CGP SWPPP, which approval will not be unreasonably delayed.
- (b) As applicable, CMAR shall employ a Qualified SWPPP Developer ("QSD") to prepare the CGP SWPPP, which shall include CMAR's specific approach for the Project to ensure compliance with the CGP. CMAR's final CGP SWPPP shall include a site-specific Construction Site Monitoring Program ("CSMP"). The CSMP shall define and identify the locations of specific BMPs to be implemented by CMAR during the various phases and staging of construction (including but not limited to: installation and maintenance of interim erosion or sediment controls, whereas the Erosion Control Plan may reflect only the post-construction location of these BMPs; equipment staging area BMPs; and interim stockpile management). The CGP SWPPP shall demonstrate compliance with all requirements of the CGP throughout the duration of the project.

- (c) CMAR shall submit to Owner one digital copy of the draft and final CGP SWPPP and a minimum of three hard copies for the draft and final, each placed in a three-ring binder with separators and tabs. Review and acceptance by Owner is for general compliance purposes only and shall not be construed by any party as relieving CMAR from any responsibility or liability for conforming to the requirements of the CGP. Owner may require that the CGP SWPPP be amended and resubmitted to Owner as it determines necessary.
- (d) All costs associated with CMAR's review of the CGP and preparation of the CGP SWPPP and the CSMP shall be included in CMAR's GMP Proposal.

13.20.6. SWPPP Implementation & Compliance

- (a) CMAR is responsible for implementing and complying with the IGP SWPPP and/or CGP SWPPP, as applicable to the nature and location of the work. CMAR's implementation and compliance activities shall include but not be limited to: installation and maintenance of BMPs (interim and final); preparation and implementation of Rain Event Action Plans (REAPS); rainfall and storm water turbidity and pH monitoring, sampling and analysis as required by the CGP; sampling and analysis to include constituents in the IGP in the event of any breach, malfunction, leakage, or spill; sampling and analysis for constituents in condition 9.c of the existing Monitoring and Reporting Program (RWQCB Order No. R8-2010-0017) in the event of groundwater containment system breach, malfunction, leakage, or spill; daily, weekly, and quarterly inspections and reporting; and all other activities required to eliminate both storm water and non-storm water discharges as required by the IGP/CGP. CMAR shall designate an independent Qualified SWPPP Practitioner (QSP), as defined by the IGP/CGP, who will be responsible for monitoring CMAR's compliance with IGP/CGP requirements on the Project at all times.
- (b) CMAR shall be responsible for providing all reports required by the IGP/CGP (monitoring, inspection, REAP, annual reports, etc.) to the Owner for review. CMAR shall submit all reports digitally with at least three hard copies to the Owner.
- (c) CMAR's designated QSP shall review and make recommendations to the Owner to amend the appropriate SWPPP as needed during the course of work to reflect actual construction progress and construction practices.
- (d) CMAR shall comply with all the requirements identified in the IGP/CGP. Non-adherence with the requirements identified in the IGP/CGP may constitute a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act and may be grounds for enforcement action by the RWQCB. Any fines incurred by Owner due to CMAR's noncompliance with the requirements of the IGP/CGP shall be back-charged by Owner to CMAR.
- (e) CMAR's compliance with IGP/CGP includes, but is not limited to:
 - (i) Developing a SWPPP to conform to a Risk Level 2 and CMAR's actual construction practices;
 - (ii) Tasks to be performed by QSP, including administering, implementing, maintaining, and ensuring adequate functioning of the various water quality control measures identified within the applicable SWPPP during construction including all Numeric Action Level (NAL) and Numeric Effluent Limitation (NEL) sampling, monitoring, and reporting requirements statutorily required for the determined Risk Level of the Project site;
 - (iii) Providing and maintaining all documentation (at the work site) and administration for the entire Contract period;

- (iv) Performing all work required for compliance with the requirements of the IGP/CGP including preparation of all REAPs, and constructing effective treatment control BMPs, i.e.: contingency basins, chemical treatments, etc. (if applicable); and
- (v) Providing all labor, tools, equipment, materials, and incidentals for any additional BMPs not shown or identified in the applicable SWPPP which may be required to comply with the requirements of the IGP/CGP or when requested by the Owner.
- (f) CMAR shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of CMAR's failure to comply with those provisions of the applicable SWPPP within CMAR's control. CMAR shall be responsible for ensuring that its Subcontractor(s) comply with the provisions of this Section. CMAR shall be liable for any action, fine, or civil liability imposed by the regulatory agencies for incidents of noncompliance that are within CMAR's area of responsibility.

13.21. HAZARDOUS OR CONTAMINATED MATERIALS

- 13.21.1. CMAR is responsible for proper handling, storage, transportation, and disposal (per all federal, State and local regulations) of any hazardous wastes, liquid wastes, or nuisance wastes (for example, finely divided, powdery, or dusty materials, strong odors, etc.) that it generates while working on Owner's behalf.
- 13.21.2. As provided by the "CONTRACT TIME" Section of the Agreement, CMAR must submit for Owner's review an Emergency/Contingency Plan for handling spills of hazardous, liquid, or nuisance materials while working on Owner's behalf. The Plan shall include proper handling, removal, and disposal of these materials per all applicable federal and State requirements. The Emergency/Contingency Plan shall also include emergency notification to Owner and any other notifications as required by law. CMAR shall not commence work at the site until Owner has approved CMAR's Emergency/Contingency Plan.
- 13.21.3. CMAR must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of Owner.
- 13.21.4. CMAR shall remove and dispose of any materials that become contaminated directly or indirectly as a result of the CMAR's operations, whether or not such contamination involves hazardous materials. The removal and disposal of any contaminated materials associated with this Contract shall be completed by the CMAR to the satisfaction of Owner at no additional cost to the Owner. CMAR shall execute all necessary manifests, bills of lading, or similar documents ("Manifests") concerning such contaminated materials which shall identify CMAR as the generator of the materials.
- 13.21.5. Prior to shipment, CMAR shall provide copies of all Manifests to the Owner to verify that CMAR has arranged for the proper disposal of hazardous materials to a licensed, permitted facility. CMAR shall provide to Owner proof of proper disposal of such materials. If Manifests and proof of proper disposal are not submitted, Owner may withhold or deduct directly the estimated cost of removal and disposal from amounts otherwise due CMAR, plus a 5% administration fee, until CMAR submits Manifests and proof of disposal.
- 13.21.6. Owner has the authority to perform inspections of the CMAR's work area at any time to ensure CMAR is compliant with all applicable regulations.
- 13.21.7. Upon written notice from Owner, if CMAR does not remove contaminated materials immediately, Owner may remove, process, transport, and certify the material as stated above and all costs incurred by Owner for removal and disposal, plus a 5% administrative fee, will be deducted directly from amounts otherwise due CMAR. If Owner performs such decontamination, CMAR shall sign any Manifests for that material as the generator.
- 13.21.8. CMAR shall train its employees, as required by OSHA and California Code of Regulations Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. CMAR

shall train its employees to follow the Emergency/Contingency Plan and know immediate response procedures should a release occur.

- 13.21.9. CMAR shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.21.10. Maintenance Facilities and Work Area: CMAR shall maintain its equipment in an area identified, acquired, and specified in Contract Documents by the CMAR and approved by Owner for such purposes. Certain maintenance areas have been designated at the Owner facility for the purpose of maintaining Owner equipment. CMAR may utilize a Owner maintenance area only with the express permission of the Owner. Owner may designate a different maintenance area for CMAR's use at any time, and CMAR will not be entitled to a Change Order as the result of such relocation.
- 13.21.11. CMAR's maintenance activities shall conform to the provisions of the "REGULATORY COMPLIANCE REQUIREMENTS" Section of the General Conditions. CMAR shall keep the facility clean, maintain clean equipment, and dispose of any contaminated materials in accordance with the "HAZARDOUS OR CONTAMINATED MATERIALS" Section, above. CMAR shall store all maintenance materials in accordance with the "CMAR'S STORAGE AND PROTECTION OF PRODUCTS" Section.
- 13.21.12. CMAR shall be responsible for any damage it causes to the designated area and for restoring the area to its original condition when CMAR ceases using the area. CMAR shall repair any damage and perform such restoration. If CMAR fails to perform such repair or restoration in a timely manner, Owner may perform that work and CMAR shall reimburse Owner for repair or restoration costs plus a 5% administrative fee.

13.22. FUGITIVE DUST EMISSION CONTROL

CMAR shall comply with SCAQMD Rule 403 including, if applicable, to prepare and submit to Owner and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. CMAR shall also notify Owner of any condition that could lead to noncompliance with the permit Rule 403 requirements. If a Fugitive Dust Emissions Control Plan is required pursuant to Rule 403, CMAR may not conduct any activities governed by SCAQMD Rule 403 until Owner has accepted CMAR's Plan and the Plan is accepted by SCAQMD. If CMAR fails or refuses to immediately correct any noncompliance with the provisions of this Section, Owner may terminate CMAR's right to proceed with the work and Owner may exercise its rights under the "TERMINATION FOR CAUSE" Section of these General Conditions.

Whether or not CMAR's right to proceed with the work is terminated, CMAR and the CMAR's sureties shall be liable for any damage to the Owner resulting from CMAR's refusal or failure to complete the work within the specified time.

CMAR shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of CMAR's failure to comply with the provisions of the accepted Fugitive Dust Emission Control Plan. CMAR shall be responsible for ensuring that all Subcontractor(s) comply with the provisions of this Section. CMAR shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the CMAR's area of responsibility.

13.23. BIOLOGICAL AND HABITAT PROTECTION

Owner will inform CMAR of any biological resources that would or could be impacted by the Project, and specify any required mitigation measures or procedures to protect those resources during construction. CMAR shall be responsible for complying with these protection measures, and for ensuring that all Subcontractors also comply. Owner has the authority to perform inspections of CMAR's work area at any time to ensure that these measures or procedures are being followed.

13.24. RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY

CMAR shall be responsible for strict compliance with the quarantine of the County of Orange for the red imported fire ant ("RIFA") as defined in California Code of Regulations, Title 3, Section 3432 and incorporated herein by reference. CMAR shall arrange for any California Department of Food and Agriculture inspections, certifications, or approvals necessary to perform any portion of the Project. A copy of the form used to request such inspections is available from OC Planning. CMAR shall bear the full financial responsibility of any assessed fine or penalty resulting from CMAR's violation of any law, regulation, or permit related to RIFA control. CMAR shall submit to Owner for Owner's approval an acceptable detailed incident report within 5 working days of the date of any violation or not later than 5 working days from the date of the notification of the violation, whichever is later.

13.25. COMPLIANCE WITH "PERFORMANCE" SECTION

CMAR shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the CMAR's failure to comply with the requirements of this "PERFORMANCE" Section. CMAR shall be responsible for ensuring that the CMAR's Subcontractor(s) comply with the provisions of this Section. CMAR shall be liable for any fine or penalty imposed by any regulatory agency or for any other cost incurred by Owner as a result of regulatory noncompliance arising from any action or inaction of CMAR or its Subcontractor(s).

14. CHANGES

14.1. OMITTED

14.2. CHANGE ORDERS

Owner may, at any time, by written order, and without notice to the sureties, request changes to the Contract Documents if within the general scope of the Project.

14.2.1. Owner's Change Order Requests: Owner shall issue a written request ("Change Order Request") which shall set forth in reasonable detail the nature of the change and the type of quote requested (lump sum or time-and-materials with a not-to-exceed amount) and whether such change involves additions, deletions, or other revisions to the Contract Documents. Within 7 days of receiving Owner's Change Order Request, CMAR shall present to Owner a detailed proposal for change in Contract Price and/or a change in the Contract Time from that set forth in the Agreement. If such change causes an increase or decrease in CMAR's cost or the time required for performance of the work, an equitable adjustment shall be made and the Contract Price and/or Contract Time modified in writing accordingly by a Change Order.

14.2.2. CMAR's Request for Change: If CMAR believes that a change in the Contract Documents, including any change in Contract Price or Contract Time, is appropriate, it shall submit, within 7 days of the event giving rise to the proposed change, a written request ("Request for Change") to Owner to issue a Change Order. Timely notice to Owner is essential to Owner's identification, prioritization, and response to claimed changes, including any claimed delays, and CMAR's failure to give Owner timely notice of such claims shall be presumed to be prejudicial to Owner. CMAR's failure to submit a notice to Owner within 7 days after the date CMAR first recognized, or should have recognized in the exercise of ordinary care, any event giving rise to any proposed change shall constitute a waiver by CMAR of any request for or entitlement to an increase in the Contract Price or Contract Time.

CMAR's Request for Change shall include a description of the proposed change in the Contract Documents, the event or circumstance giving rise to the need for the change, and any proposed change in the Contract Price and/or Contract Time associated with the Request for Change. If the Request for Change includes a proposal to increase the Contract Time, CMAR shall include a description of: (1) the cause(s) for the proposed extension of time, including but not limited to causal events and responsible persons and organizations; (2) the dates (or anticipated dates) of performance of the changed work; (3) activities on the Accepted Project Schedule affected by the change, any new activities created by the change, and their relationship with existing activities; (4) the anticipated extent of any claimed increase to the Contract Time; and (5) recommended action to avoid or minimize the increase. If Owner agrees that a

change in the Contract Documents is appropriate, Owner may use the same options described in the "Lump Sum Change Orders" and "Time-and-Materials Change Orders" Sections below in response to CMAR's Request for Change. CMAR waives all claims as to which it has not provided Owner with notice through a Request for Change in accordance with this Section. In the event of a claim or litigation arising from any disagreement involving CMAR's Request for Change, CMAR's compensation (if any) shall be limited to an amount calculated in accordance with the "Time-and-Materials Change Orders" Section below.

14.2.3. Lump Sum Change Orders: For a lump sum change, CMAR's quote shall be itemized and supported with sufficient substantiating data (including but not limited to detailed subcontractor estimates, supplier quote sheets, prices, invoices, and rate sheets) to permit evaluation with respect to the following costs:

- (a) Labor (show hourly rate multiplied by estimated hours);
- (b) Payroll taxes on labor;
- (c) Materials, supplies, and equipment (include unit costs and estimated quantities);
- (d) Machinery and equipment rental (include rental rates and estimated durations);
- (e) Sales, use, or similar taxes related to the work;
- (f) Other Items: Owner may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from CMAR or any of its subcontractors;
- (g) Reasonable overhead and profit associated with the change, not to exceed 15% on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and CMAR shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. Owner will pay only one overhead and profit markup of 6% for CMAR and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and
- (h) Premiums for all bonds and insurance (the maximum amount for this shall be 3% of above items and CMAR shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).

Owner may reject CMAR's lump sum proposal, may negotiate with CMAR a revision of the requested change and associated lump sum proposal, or may approve the CMAR's lump sum proposal and incorporate it into a Change Order.

14.2.4. Time-and-Materials Change Orders: For a time-and-materials change, Owner shall determine the adjustment to the Contract Price on the basis of actual costs as follows:

- (a) Cost of materials and supplies (show actual unit cost multiplied by actual quantity). The cost of materials shall be at invoice price or the lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery. Owner reserves the right to approve materials and sources of supply or to supply materials to CMAR if necessary for the progress of the work. No markup for overhead and profit shall be applied to any material provided by Owner.
- (b) Tool and equipment rental. Owner will not pay for the use of tools that individually have a replacement value of \$200 or less. Regardless of ownership, the equipment rental rates shall be based upon the edition of equipment rental rates published by the Caltrans Division of Construction, or locally available rate or other reference acceptable to Owner current as of the date the changed work is performed. The rental rates paid shall include the cost of fuel, oil

lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidents. Necessary loading and transportation costs for equipment used on the changed work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to Owner than holding it at the work site, it shall be returned, unless CMAR elects to keep it at the work site at no expense to Owner. All equipment shall be acceptable to Owner, in good working condition, and suitable for the purpose for which it is to be used. Manufacturers' ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the work site shall be the duration of its use on the changed work, commencing at the time it is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site. CMAR shall submit invoices for tool and equipment rental costs. If CMAR does not submit invoices, Owner may establish the rental costs at the lowest price which was current at the time the changed work was performed.

- (c) Cost of labor (show actual total hourly rate multiplied by actual hours spent on changed work). The costs of labor shall not exceed the wages prevailing for each craft or type of workers performing the changed work at the time the changed work is done. The costs of labor shall include the actual basic hourly rate, plus employer's actual regular payments for health and welfare, pension, vacation or holiday, training, and other direct costs resulting from federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements and shall be supported by payroll records. The costs of labor shall not include any amount for bonuses or extraordinary vacation or holidays. The use of a labor classification that would increase the changed work cost will not be permitted unless CMAR establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportional to all of their assigned work and only that applicable to changed work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup for overhead and profit below.
- (d) Sales taxes on materials (percentage of item (a), above).
- (e) Payroll tax on labor (percentage of item (c), above).
- (f) Insurance (workers' compensation and liability insurance).
- (g) Other Items. Owner may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from CMAR or any of its subcontractors. CMAR shall submit invoices covering all such items in detail.
- (h) Overhead and profit. CMAR shall receive a maximum ____% for overhead and profit on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of ____% on above items for its overhead and profit and CMAR shall be entitled to a maximum of ____% on above items for its overhead and profit on the changed work. Owner will pay only one overhead and profit markup of ____% for CMAR and one markup of ____% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. Owner will not pay any overhead or profit for omitted work.
- (i) Bond (____% of above items).

CMAR shall keep and present, in such form as Owner may prescribe, an itemized accounting of the costs or savings attributable to the changed work, together with appropriate supporting data. The accounting shall include a daily job record in quadruplicate containing a detailed

description of: the labor (workers, classifications, and hours worked); quantities of materials used; equipment used (identifying the equipment and the hours of use); and any other services and expenditures in such detail as Owner may require. Upon being signed and agreed to by Owner and CMAR at the end of each day's performance, the daily job record will become the basis for payment for the changed work. But such agreement shall not preclude the Owner from thereafter conducting an audit and adjusting the basis for payment. Failure by CMAR to submit the daily report by the close of the next working day may constitute a waiver of any rights for that day. Upon request by Owner, CMAR shall permit Owner to inspect CMAR's original estimate for the Project, subcontract agreements, or purchase orders relating to the change. Upon completion of the changed work ordered to be performed on a time and materials basis, Owner will then issue a unilateral Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

- 14.2.5. Unilateral Change Orders: If Owner and CMAR cannot reach an agreement on a proposed change, Owner may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.
- 14.2.6. No Extension of Contract Time without Critical Path Delay: CMAR shall not be entitled to an extension of the Contract Time unless CMAR demonstrates a delay to the critical path shown on the most recent Accepted Project Schedule.
- 14.2.7. No Additional Compensation for Early Completion: Nothing contained in the Contract Documents creates any contractual right, express or implied, on the part of CMAR to early completion of the Project. Under no circumstances shall Owner owe additional compensation to CMAR for CMAR's inability to achieve completion of the Project before the expiration of the Contract Time, whether or not such inability is caused by the acts or omissions of Owner or any other party for which Owner is responsible, regardless of any approval by Owner of the Accepted Project Schedule.
- 14.2.8. Credits: Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order: (1) if the net value of a change to the work results in a credit from CMAR, then the credit given shall include costs as well as overhead and profit; or (2) if the net value of a change to the work results in additional costs, then overhead and profit will only be applied to the amount by which the added costs of the change exceed the credited amount. When a change proposed by Owner results in the deletion of work and the Owner and CMAR are unable to agree upon the cost, overhead, and profit thereof, the Owner's estimate of the cost, overhead, and profit shall be deducted from the Contract Price by a Change Order unless within 15 days of receiving the Owner's estimate CMAR presents proof that the Owner's estimate is in error.
- 14.2.9. Overhead and Profit: CMAR shall receive a maximum ____% for overhead and profit on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of ____% on above items for its overhead and profit and CMAR shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. Owner will pay only one overhead and profit markup of ____% for CMAR and one markup of ____% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. Owner will not pay any overhead or profit for omitted work.

Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order, the amount Owner pays for overhead and profit shall be CMAR's only compensation for: all costs of supervision, superintendence, and scheduling; wages of timekeepers, watchmen, and clerks; tools individually valued at \$200 or less; incidentals; any and all field and home office expenses; costs of estimating and preparing change orders; all impact costs including but not limited to lost productivity associated with

"learning curves," "productivity factors," and "ripple effects"; and all other expenses not included in itemized costs.

- 14.2.10. Compensation for Delay: CMAR shall be compensated for its substantiated actual, direct expenses, together with the markup for overhead and profit described in "Overhead and Profit" above, resulting from delay for which Owner is responsible. Under no circumstances shall Owner compensate CMAR for extended home office overhead or profit based on an "Eichleay formula" or any other proportionate allocation of CMAR's overhead expenses or profit, all of which shall be deemed to have already been included in the above-described markup.
- 14.2.11. Unit Price Changes: If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve substantial change in character of the work from that shown on the Plans or Special Provisions, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price. If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions varies from the GMP Proposal quantity by 25% or less, payment will be made at the Contract Unit Price. If the actual quantity of the item of work varies from the GMP Proposal quantity by more than 25%, then payment will be made as described in Subsection (a) "Increases of More than 25%," or Subsection (b) "Decreases of More than 25%," below, as appropriate. If a change is ordered in an item of work covered by a Contract Unit Price, and such change involves a substantial change in the character of the work from that shown on the Plans or Special Provisions, an adjustment in payment will be made as described in Subsection (c) "Substantial Change in Character of the Work," below.
- (a) Increases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions exceed the GMP Proposal quantity by more than 25%, then payment for the quantity in excess of 125% of the GMP Proposal quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the CMAR and Owner or, at the option of Owner, on the basis of Time and Materials Change Orders, described above. However, in no event will payment be more than would be paid for the actual quantity at the Contract Unit Price.
 - (b) Decreases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Special Provisions, be less than 75% of the GMP Proposal quantity, then an adjustment in payment will not be made unless CMAR requests an adjustment in writing and adequately demonstrates that the reduction in quantity has increased CMAR's per-unit cost of performing the work item. If CMAR so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by CMAR and Owner, or at the option of Owner, on the basis of Time and Materials Change Orders, described above. However, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be paid for 75% of the GMP Proposal quantity at the Contract Unit Price.
 - (c) Substantial Change in Character of Work: If a change in an item of work covered by a Contract Unit Price involves a substantial change in the character of work from that shown on the Plans or Special Provisions, then an adjustment to the payment for the Work may be made by mutual agreement of CMAR and Owner as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at Owner's option as a Time and Materials Change Order, as described above.

14.3. DELAYS DUE TO WEATHER AND FORCE MAJEURE

- 14.3.1. Subject to the other provisions of these Contract Documents, CMAR may be entitled to an extension of the Contract Time, but no damages or increase in the Contract Price, for delays arising from the following causes when they occur beyond CMAR's or its Subcontractors' control, fault, or negligence:

- (a) Acts of God (tornadoes, fires, hurricanes, blizzards, earthquakes, typhoons, or floods), war, civil unrest, trade embargoes, labor disputes, or strikes necessitating stoppage of work; or
 - (b) Weather days necessitating stoppage of work in excess of the number of anticipated weather days specified in the "CONTRACT TIME" Section of the Agreement. The Contract Time shall be deemed to take into account the number of working days specified in the Agreement ("anticipated weather days") that stoppage of work can reasonably be expected at the Project site due to rain or other adverse weather conditions, and CMAR agrees that the number of weather days indicated in the Agreement is a reasonable approximation of the number of weather days that may impact the work. CMAR's construction schedule shall include this number of anticipated weather days. Time extensions for weather days will only be considered when the number of days in question exceeds the number of days specified in the Agreement, those days impact a critical path element of the Project, and CMAR cannot redirect work efforts to unaffected portions of the Project. If CMAR believes that the progress of the work has been adversely affected by weather, CMAR shall submit a written request for extension of time to Owner.
- 14.3.2. A written request for any extension of the Contract Time shall be delivered to Owner within 7 days of the first date of commencement of each delay. CMAR's failure to submit such request within the time specified will be considered grounds for refusal by Owner to consider such request.
- 14.3.3. If the Project involves the construction of a permanent structure, no extensions of time will be made for weather after the principal portions of the work are enclosed. Owner shall determine when the structure is "enclosed" for purposes of this provision.
- 14.3.4. Extensions of time due to weather or force majeure, when granted, will be on the basis of 1.4 calendar days credit for every working day lost, with the credit for each separate extension rounded off to the nearest whole calendar day. A "working day lost" will not include any day during which at least 60% of the normally scheduled workforce is able to work for at least five hours of the day.
- 14.3.5. CMAR shall not be entitled to any extension under this Section if the unforeseen circumstances occur beyond the Contract Time.

14.4. CONDITIONS AFFECTING THE WORK

- 14.4.1. Existing Site Conditions: Information regarding the work site represented in the Plans and Special Provisions prepared by the CMAR is believed to be correct, and unless expressly stated in the Contract Documents, Owner does not warrant either the completeness or accuracy of such information. CMAR shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions that can affect the work or the cost thereof. Any failure by CMAR to do so will not relieve CMAR from responsibility for successfully performing the work without additional expense to Owner.
- 14.4.2. Site Investigation and Representation: CMAR acknowledges satisfaction as to the nature and location of the work; the general and local conditions, particularly those bearing upon availability of transportation and access to the site; disposal, handling and storage of materials; availability of labor, water, electric power, telephone, and roads; uncertainties of weather or physical conditions at the site; the conditions of the ground; the character of equipment and facilities needed prior to and during the performance of the work; and all matters that can in any way affect the work or the cost thereof under this Contract.

CMAR further acknowledges satisfaction as to character, quality, and quantity of surface and subsurface materials to be encountered from CMAR's inspection of the site and pre-construction exploratory work by CMAR included in the Contract Documents. Failure by CMAR to become acquainted with the physical conditions of the site and all the available information will not

relieve CMAR from responsibility for properly estimating the difficulty or cost of successfully performing the work.

CMAR warrants that as a result of examination and investigation of all the above-described data, CMAR can perform the work in a good and workmanlike manner and to the satisfaction of Owner. Owner assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of the Contract unless: (1) such representations are expressly stated in the Contract Documents; and (2) the Contract Documents expressly provides that the responsibility therefore is assumed by Owner.

- (a) **Subsurface Investigation:** When test holes, if any, have been excavated to indicate subsurface materials at particular locations, Owner assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings made, or of the log of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. A log of test borings, if any, showing a record of the data obtained on subsurface conditions may be examined upon request. CMAR may make arrangements with Owner for permission to conduct such additional subsurface investigation as may be necessary to verify existing conditions. CMAR shall examine the site and may make arrangements with Owner to conduct CMAR's own additional subsurface investigation.

14.4.3. **Changed Conditions:** CMAR shall promptly, but in no event more than 7 days after the condition is first observed, notify Owner in writing of the following site conditions ("Changed Conditions") and shall leave such conditions undisturbed until otherwise directed by Owner:

- (a) Subsurface or latent physical conditions at the site differing materially from those investigated by CMAR during pre-construction and as such represented in the Contract Documents;
- (b) Unknown physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and

Upon written notice of Changed Conditions from CMAR, Owner shall promptly investigate such conditions. If Owner finds that such conditions do materially differ and cause an increase or decrease in the cost of or the time for performance of the work, Owner may, at its discretion: (a) terminate all or part of the Contract in accordance with "TERMINATION FOR CONVENIENCE OF OWNER" Section of these General Conditions; (b) issue a written change to the Contract in accordance with the "CHANGES" Section of these General Conditions; or (c) make any other appropriate arrangements to address the Changed Conditions. Any claim by CMAR for adjustment hereunder shall not be allowed unless CMAR has given proper notice.

In the event that a dispute arises between the Parties as to whether the conditions constitute Changed Conditions or affect the price or time for performance of any part of the work: (i) CMAR shall submit a written notice of potential claim to Owner; (ii) CMAR shall then proceed with all work to be performed under the Contract; and (iii) CMAR shall not be excused from any scheduled completion date provided for by the Contract. CMAR shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Parties.

14.5. PROSECUTION OF CHANGED WORK

CMAR shall promptly proceed with the work described in a Change Order. Nothing provided in this "CHANGES" Section shall excuse the CMAR from proceeding with the prosecution of the work as changed.

14.6. DIRECTOR'S AUTHORITY

The Director is authorized by Owner's Board of Supervisors to order changes or additions in the work where the cost of such change does not exceed the limits specified in Public Contract Code Section 20142. Only the Board of Supervisors may approve changes greater than those limits.

14.7. MINOR CHANGES IN THE WORK

Owner shall have authority to order minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on CMAR. CMAR shall carry out such written orders promptly.

15. TERMINATION

15.1. TERMINATION FOR CONVENIENCE OF Owner

Notwithstanding any other provision of the Contract, Owner may at any time and without cause terminate the Contract, in whole or in part, upon not less than 30 days written notice to the CMAR. Such termination shall be effected by delivery of a Notice of Termination to CMAR specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part, and, if applicable, the portion of work to be terminated. CMAR shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by Owner. Owner shall pay CMAR for the work completed and accepted by Owner prior to the effective date of the termination, and such payment shall be CMAR's sole remedy. Under no circumstances will CMAR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. CMAR shall insert in all subcontracts that the Subcontractors shall stop work on the date of and, if applicable, the portion of work to be terminated in a Notice of Termination and shall require Subcontractors to insert the same condition in any lower tier subcontracts.

15.2. TERMINATION FOR CAUSE

- 15.2.1. If CMAR fails to carry out the requirements of the Contract, including but not limited to by: failing to commence the work within the time specified; failing to prosecute the work with such diligence as will ensure its completion within the Contract Time; failing to complete the work within the Contract Time; failing to execute the work in the manner specified in the Contract Documents; persistently, willfully, or knowingly failing to comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the work without Owner's consent; or if in the opinion of the Board of Supervisors CMAR is not complying in good faith with the Contract; then Owner may, by written notice to CMAR, terminate for cause CMAR's right to proceed with the work or such part of the work as to which there has been delay, breach, or other default.
- 15.2.2. Upon receipt of written notice from Owner of a termination for cause, CMAR shall cease operations as directed by Owner in the notice and take all actions necessary, or as Owner directs, for the protection and preservation of the work.
- 15.2.3. After issuing a notice of termination for cause, Owner may take over the work and prosecute the same to completion by whatever means Owner deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the work such materials, equipment, supplies, Contract Documents, and other information in whatever form as may be on the site for the work and necessary therefor.
- 15.2.4. If Owner terminates for cause CMAR's right to proceed with the work, or CMAR otherwise fails to prosecute the work to completion, then the resulting damage will include but not be limited to Liquidated Damages for such reasonable period of time as may be required for completion of the work together with any costs incurred by Owner to complete the work in excess of the unpaid Contract Price. CMAR shall not be entitled to receive any further payment under the Contract

until the work is complete. If Owner's cost of completing the work, Liquidated Damages, and other damages exceed the unpaid balance of the Contract Price, then CMAR and CMAR's sureties shall pay the difference to Owner within thirty days of Owner's demand therefor.

- 15.2.5. Whether or not Owner issues a written notice of termination for cause, CMAR and CMAR's sureties shall be liable for any damage to Owner resulting from CMAR's refusal or failure to complete the work within the specified time or from CMAR's other breach or default with respect to the performance of the work.
- 15.2.6. CMAR's right to proceed shall not be terminated for cause nor will CMAR be charged with resulting damage if the delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CMAR, including but not limited to those circumstances described in the "WEATHER DAYS AND FORCE MAJEURE" Section of the General Conditions, acts of Owner, or acts of another CMAR in the performance of a contract with Owner.
- 15.2.7. The rights and remedies of Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

16. DISPUTES AND CLAIMS

16.1. DISPUTES AND CLAIMS

- 16.1.1. Continuing Performance during Dispute Resolution: In the event of a claim or dispute between CMAR and Owner as to performance of the work, a demand for an extension of time, the interpretation/implementation of the Contract Documents, or payment or nonpayment for work performed, CMAR and Owner shall attempt to resolve the claim or dispute. Pending resolution of the claim or dispute, CMAR shall continue the work diligently to completion as directed by Owner. If the claim or dispute is not resolved, CMAR agrees that it will neither rescind this Contract nor stop the progress of the work.
- 16.1.2. Claims for \$375,000 or Less: In the event of a claim of \$375,000 or less, the Parties shall resolve the claim pursuant to Public Contract Code Sections 20104 et seq., summarized herein. A claim is defined as CMAR's demand for: (i) a time extension; (ii) payment of money or damages arising from work done by, or on behalf of, CMAR pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (iii) an amount the payment of which is disputed by Owner.
- (a) Pursuant to Public Contract Code Section 20104.2, all claims must be in writing, must be accompanied by documents necessary to substantiate the claims, and must be filed on or before the date of final payment. The Owner's time to respond in writing and/or request additional documentation shall be as set forth in Public Contract Code Section 20104.2.
 - (b) If CMAR disputes Owner's written response or Owner fails to respond, CMAR may demand an informal conference. If the claim remains in dispute following the conference, CMAR may file a claim under Government Code Sections 900, et seq. The time limit for filing such claim may be tolled as provided in Public Contract Code Section 20104.2(e).
 - (c) The foregoing provisions do not apply to tort claims and do not affect the time periods for filing tort claims.
 - (d) In the event a civil action is filed stemming from a claim subject to Public Contract Code Sections 20104 et seq., the Court shall submit the matter to nonbinding mediation unless waived by mutual stipulation. If after mediation the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure Section 1141.11, and the arbitration shall proceed pursuant to the terms set forth in Public Contract Code Section 20104.4(b).

- (e) Attorney's fees arising from a trial de novo shall be awarded as provided by Public Contract Code Section 20104.4(b)(3).

- 16.1.3. Claims in Excess of \$375,000: The dispute resolution procedure set forth in Public Contract Code Sections 20104 et seq., shall not apply to resolution of claims in excess of \$375,000, which claims shall be resolved by a court of competent jurisdiction in Orange County, California, after the Project has been completed and not before.
- 16.1.4. Time for Submitting Claims in Excess of \$375,000 and Waiver of Untimely Claims: CMAR shall submit any claim for additional compensation in excess of \$375,000 to Owner in writing, with documents necessary to substantiate the claim, stating the alleged facts giving rise to and the alleged basis for the claim, and when the facts giving rise to the claim became known to CMAR. Any such claim that CMAR fails to submit to Owner within 30 days after CMAR discovers the facts giving rise to the claim shall be deemed waived. In no event shall a claim for additional compensation in excess of \$375,000 be asserted after CMAR submits an application for final payment or after there has been a cessation of the work.

17. OCCUPANCY

17.1. PARTIAL OCCUPANCY

- 17.1.1. Owner reserves the right to enter and install equipment within each portion of the Project as it is ready to receive same, upon the condition that CMAR shall not be responsible for equipment so placed other than loss or damage caused by the acts or omissions of CMAR or those in CMAR's employ. Such partial occupancy by Owner shall not constitute acceptance of the Project or of work not completed in accordance with the Contract Documents, nor shall it in any way relieve CMAR from correcting defective workmanship or materials in the area where Owner has installed equipment.
- 17.1.2. Owner reserves the right to take possession of or use all or part of any work prior to completion and final acceptance of all the work. If Owner exercises this right, CMAR shall be relieved of liability for loss or damage to completed portions of the work other than loss or damage caused by the acts, omissions, or breaches of warranty by CMAR. Such taking of possession by Owner shall not relieve CMAR from any other provisions of the Contract Documents, shall not constitute a final acceptance of any such work or of work not completed in accordance with the Contract Documents, and shall not relieve CMAR from responsibility for correcting defective workmanship or materials in the area so occupied.
- 17.1.3. Owner may at any time during the performance of the work enter the work area for the purpose of performing any necessary work by Owner labor or other CMARs, and for any other purpose in connection with the installation of facilities. In doing so, Owner shall endeavor not to interfere with CMAR, and CMAR shall not interfere with other work being done by or on behalf of Owner.

18. ACCEPTANCE

Unless otherwise provided in the Contract Documents, Owner's acceptance of CMAR's work shall be accomplished by Owner recording a Notice of Completion as promptly as practicable after completion, inspection, and testing of all work required by the Contract Documents. Owner's acceptance of the work shall be the start date of CMAR's obligations under the "TWO-YEAR CORRECTION PERIOD" Section of the General Conditions, and of the manufacturers' and installers' warranties required by the Contract Documents. Owner's acceptance of the work shall not be construed to limit Owner's rights under the Contract Documents or release CMAR from any responsibility for latent defects, for correcting Defective Work, or for honoring any warranty obligations of the Contract Documents.

19. MISCELLANEOUS PROVISIONS

19.1. ASSIGNMENT

Neither the Contract nor any portion thereof may be assigned by CMAR unless approved in writing by Owner. If CMAR is not a corporation with publicly traded stock, then the transfer of more than 10% of

the stock held by shareholders of the corporation or a change in the composition of the board of directors of the corporation shall be deemed an assignment for purposes of this clause. Any attempted assignment contrary to the provisions of this Section shall be void.

Notwithstanding the foregoing, claims for monies due or to become due to CMAR from Owner under the Contract may be assigned with the written consent of the Director to a surety, bank, trust company, or other financial institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, CMAR, or CMAR's assignee, shall submit a written request to Owner enclosing a letter from the proposed assignee indicating that it will accept such assignment.

19.2. ORAL MODIFICATION

No oral statement shall in any manner modify the Contract. All changes to the Contract must be in writing.

19.3. NO WAIVER BY Owner

No failure on the part of Owner to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that Owner may have. A waiver by Owner of any breach or failure to perform under the Contract Documents shall not constitute a waiver of any subsequent breach or failure. The failure of Owner to enforce a requirement of the Contract Documents in one or more instances shall not preclude Owner from subsequently enforcing such requirement(s).

19.4. RECORDS, AUDITS, AND INSPECTION RIGHTS

CMAR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. CMAR's accounting and control system shall be in accordance with generally accepted accounting practices of the construction industry. CMAR shall preserve all of its books and records relating to this Contract, including but not limited to its job cost records, payables/receivables records, accounting books, bids, cancelled checks, receipts, subcontracts, purchase orders, journals, vouchers, payrolls, correspondence, drawings, daily logs, photographs, and memoranda, for a period of 4 years after final payment. Should CMAR cease to exist as a legal entity, CMAR shall forward its records pertaining to this Contract to the surviving entity in a merger or acquisition, or, in the event of liquidation, to Owner.

Owner, the California State Auditor, and their contracted representatives, shall have the right to examine and audit CMAR's accounting procedures and internal controls of CMAR's financial systems and to inspect and copy any books and records relating to this Contract. Such an examination, audit, and/or inspection may be requested at any time during the Project. CMAR shall cooperate fully with Owner and the California State Auditor in the conduct of such examinations, audits, and inspections, shall grant full access at all reasonable times to its offices, the Project site, and its books and records relating to the Contract, and shall allow Owner to interview CMAR's employees who might reasonably have information related to CMAR's books and records, provided that Owner has given CMAR at least one working day's advance notice of Owner's or the California State Auditor's intent to examine, audit, inspect, and interview employees. All examinations, audits, inspections, and interviews shall be conducted during normal business hours. CMAR shall include in all its subcontracts a provision giving Owner and the California State Auditor the same rights to examine and audit the Subcontractor's accounting procedures and internal controls of its financial systems, inspect the Subcontractor's books and records relating to the Project, and interview Subcontractor's employees as CMAR has given the Owner and the California State Auditor in this Section.

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 et seq., all records provided by CMAR to Owner are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to Owner, CMAR shall identify any records it believes are

exempt from disclosure and identify the applicable CPRA exemption. If the disclosure of such records is subsequently requested, Owner will notify CMAR of such request. Unless CMAR obtains a protective order issued by a court restricting disclosure of the requested records, Owner may disclose the records if Owner determines that the Public Records Act requires disclosure. CMAR shall indemnify and defend Owner in any action to compel disclosure of such records.

19.6. PATENT INFRINGEMENT

CMAR shall promptly report to Owner any notice or claim of patent infringement arising from the performance of the Contract. CMAR shall, upon Owner's request, furnish to Owner any and all information in CMAR's possession relevant to such notice or claim. CMAR shall indemnify and defend Owner from any and all claims or lawsuits on account of any alleged patent infringement arising out of the performance of the Contract, and shall pay any judgment rendered against Owner, its officers, or its employees resulting from such claim or lawsuit.

19.7. ASSIGNMENT OF ANTITRUST ACTIONS

Public Contract Code Section 7103.5 provides: "In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the CMAR and/or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CMAR, without further acknowledgment by the parties." CMAR acknowledges and agrees to the foregoing provision, and shall cause it to be included in full in its Subcontractor agreement(s) to effectuate this assignment and the requirements of Section 7103.5.

19.8. OWNER'S PROPERTY ON SITE

All of Owner's property removed or displaced pursuant to this Contract shall remain the property of Owner unless expressly stated otherwise in the Contract Documents, and CMAR shall exercise reasonable care to prevent loss or damage to such property and shall promptly deliver it to the place designated by Owner. In particular, all excavated clean soil is the property of Owner and shall remain on site unless otherwise provided in the Contract Documents or otherwise directed by Owner in writing.

19.9. WRITTEN NOTICE

Any notice required under the Contract Documents to be given to Owner by CMAR shall be in writing and personally delivered to the Project Manager with a copy sent via U.S. mail, addressed as follows:

OC Public Works
«CONTACT», Project Manager
re: RFP 080-C22896-NM
601 North Ross Street,
Santa Ana, California 92701

Notice via electronic mail is insufficient.

END OF GENERAL CONDITIONS

<<INSERT SUPPLEMENTARY GENERAL CONDITIONS HERE>>

<<INSERT SPECIAL PROVISIONS-CONSTRUCTION HERE>>