

**CONSTRUCTION MANAGER AT RISK CONSTRUCTION CONTRACT**

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 “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 agreement 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 their designee; this Agreement; the General Conditions; Supplementary General Conditions; Addenda and Bulletins; Attachments; Appendices; Plans; and Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Agreement, 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**

**INTRODUCTION**

Aliso and Wood Canyons Wilderness Park – New Visitor Center shall be located at 28373 Alicia Parkway in Laguna Niguel, CA . The new visitor center will be located in the main entry area for the wilderness park. The park is approximately 4,500 acres of coastal canyons, grasslands, and Oak and Sycamore habitat that is one of the most pristine natural areas found in Orange County.

The construction of the building is based upon the design principal of being “light on the land” and will consist of modules built off site and set on piers that will be built on site. The project also includes bringing in major utilities to the new building and stubbing out utilities for two future buildings. The site currently has power, phone and reclaimed water for irrigation, but does not have potable water or sewer.

The work shall conform to the Construction Documents and all codes, regulations, laws, etc. referenced in the Contract Documents or by industry standard, including General Requirements, Division 01 – 01010 Summary of Work.

**SCOPE OF WORK**

2.1 Preconstruction Phase Services. The CMAR agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposal (RFP). Commencement of the Construction Phase shall not excuse the CMAR from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CMAR Services performed during the Preconstruction Phase.

- 2.1.1 The CMAR shall provide a preliminary evaluation of the Owner’s program and budget requirements, each in terms of the other.
- 2.1.2 The CMAR shall provide the following services relating to design and construction tasks:
- a) The Construction Manager at Risk shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.
  - b) The CMAR shall jointly schedule and attend regular meetings with the A-E and Owner’s Authorized Representative. The CMAR shall consult with the Owner and A-E and User Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
  - c) The CMAR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
  - d) The CMAR shall review in-progress design documents, including the documents generally described in the industry as Schematic Design, Design Development, Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Documents.
  - e) CMAR shall review completed Schematic Design, Design Development, Construction Documents and suggest modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain and to improve completeness and clarity.
  - f) CMAR shall work with A-E and Owner to review systems and equipment using auto cad format and utilizing 2-D or 3-D modeling, if necessary.
- 2.1.3 The CMAR shall provide the following services related to the Project Schedule:
- a) The CMAR shall prepare, and weekly update, a preliminary Project Schedule for the A-E and Owner’s review and approval.
  - b) The CMAR shall coordinate and integrate the preliminary Project Schedule with the services and activities of the Owner, A-E, and CMAR. As design proceeds, CMAR shall update the preliminary Project Schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner’s occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner’s prior written approval. If preliminary Project Schedule updates indicate that previously approved Schedules may not be met, the CMAR shall make appropriate recommendations to the Owner and A-E.

- 2.1.4 The CMAR shall make recommendations to A-E and Owner regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project.
- 2.1.5 The CMAR shall provide the following cost estimating services and shall be required to reflect the best professional estimate of actual cost estimates.
- a) Project construction cost estimates shall be developed/updated and submitted as a part of the following submissions:
    - i. At the award of the Contract, the CMAR shall provide an estimate of total construction cost of the project, based on the written scope of work. The estimate shall utilize area, volume, or similar estimating techniques for review by A-E. The cost shall be summarized in a way to show and avoid potential cost overruns.
- 2.1.6 To accomplish the objective set forth in 2.1 above, the CMAR shall provide consultation throughout the Preconstruction Phase including, but not limited to the furnishing of all necessary Value Engineering (“VE”) services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the Owner and the A-E, the CMAR shall:
- a) Formulate and evaluate alternative design, schedules, systems, and materials;
  - b) Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives ;
  - c) Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;
  - d) Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the Owner and the A-E agreed to accept the alternative.
  - e) In addition to the reports discussed in subparagraph (d) above, the CMAR shall maintain a running log of all Value Engineering alternatives considered throughout the entire preconstruction period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the Owner and the A-E have agreed to incorporate the alternative.
  - f) Constructability Review. CMAR shall check the documents for completeness and coordination and make recommendations to A-E and Owner.
- 2.1.7 CMAR shall perform the following tasks related to subcontracting:
- a) The CMAR shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the Owner and A-E for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from

- whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.
- b) The CMAR shall provide input to the Owner and the A-E regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CMAR shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, and improving or accelerating construction completion.
  - c) Prior to commencement of any Construction, either for Early Work or GMP Amendment Work, CMAR shall provide to Owner the Combined List of Subcontractors. The Facilities Representative and Owner Representative shall review the list and approve or give any objections to the CMAR.
- 2.1.8 The CMAR shall recommend to the Owner and A-E a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule, which shall be procured by the CMAR upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The CMAR shall expedite the delivery of long-lead time items.
- 2.1.9 The CMAR shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.
- 2.2 Construction Phase Services.
- 2.2.1 Upon execution of an Early Work Amendment or GMP Amendment, the CMAR shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.
- 2.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Construction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
- 2.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment. CMAR shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CMAR Fee, does not exceed the Early Work Price; however if CMAR performs Early Work with a cost in excess of the Early Work Price, the CMAR shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CMAR shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.
- 2.2.4 Prior to commencement of any Construction, and in any event not later than mutual execution of the GMP Amendment, CMAR shall provide to Owner a performance bond and a payment security bond as required by the General Conditions in amounts equal to the value of the Amendment(s). If an Early Work Amendment is executed, CMAR shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CMAR shall provide to

Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sums equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CMAR shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

- 2.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, the CMAR shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, Client Representative, A-E and other designated Project consultants (the “Stakeholders”). CM Services shall include, but are not limited to:
  - 2.3.1 Providing all Preconstruction Phase Services described above;
  - 2.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating these activities to the stakeholders during the Construction Phase.
  - 2.3.3 Continuously monitoring the Project Schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;
  - 2.3.4 Working with the Owner, the Owner Representative, and the A-E to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;
  - 2.3.5 Providing Value Engineering (“VE”) services ongoing throughout the Project. CMAR shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. CMAR acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;
  - 2.3.6 Holding and conducting predetermined scheduled meetings with the Owner, Client Representative and the A-E to coordinate, update and ensure progress of the Work;
  - 2.3.7 Submitting weekly/monthly written report(s) to the Owner. Each report shall include, but shall not be limited to, Project updates including; actual costs and progress for the reporting period as compared to the estimate of costs, explanations of significant variations, work completed, work in progress, changes in the work and other information as determined to be appropriate by the Owner. Written updates shall be provided to the Owner as deemed appropriate by the CMAR or as requested by the Owner.
  - 2.3.8 Preparing Daily Reports in the format of the report as outlined in General Conditions.
  - 2.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMAR shall identify variances between actual and estimated costs and report the variances to the Owner and A-E at regular intervals.

- 2.3.10 Cooperation with any and all consultants hired by Owner.
- 2.3.11 Cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period.
- 2.3.12 Assist the Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy.
- 2.3.13 Incorporating Owner HVAC and automated control system scheduled activities and inspections into the Project Schedule and coordinating Subcontractors required to participate in the schedule.
- 2.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.
- 2.3.15 Assist the A-E in evaluating Life Cycle Cost and Value Engineering. Options including but not limited to the following: building envelope, HVAC, lighting, and sustainability 2016 CALIFORNIA GREEN (CAL Green) BUILDING STANDARDS CODE (EFFECTIVE JANUARY 1, 2017). Cooperating to ensure building meets or exceed CAL Green with the Owner and the A-E throughout the project.

**3. CONTRACT PRICE, CONTINGENCY AND CONTRACT TIME**

**3.1 CONTRACT PRICE**

OWNER shall pay CMAR for all work required by the Contract Documents a Contract Price as authorized and amended by GMPs not exceeding the total sum of TBD (\$00.00) , and as it may be adjusted pursuant to the “Changes” Section of the General Conditions, and in accordance with the “PAYMENTS” Section of the General Conditions.

**3.2 CONTINGENCY**

“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. Any CMAR Contingency not utilized shall be split 50/50to the Owner after Project completion.

“Contingency (Owner’s)” means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s Contingency will be set by the Owner and will be in addition to the project costs included in the CMAR’s GMP package. Use and management of the Owner’s Contingency during the construction phase is described in the Design Phase Contract and the following.

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

- (1) At its discretion for increases in the Cost of the Work which are not the Owner’s responsibility, or

- (2) 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.

3.2.2 Owner's Contingency are funds 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 of bonds (as detailed below); proof of insurance; and initial job Construction Schedule. 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 initial job Construction Schedule, Owner will deliver to CMAR a signed copy of the Agreement and a Notice to Proceed with the work. CMAR shall not commence construction until Owner issues the Notice to Proceed. CMAR shall complete all work required by the Contract Documents within 500 calendar days of the effective date of the Notice to Proceed ("Contract Time").

The Owner and A-E 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. BONDS**

Within 10 calendar days after award of each Contract GMP, the successful CMAR shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the GMP Contract Price, issued by a surety in accordance with the requirements of the General Conditions of the Contract. The bonds shall be in the form of the models included in the Request for Proposal Documents, and must be approved by Owner's Risk Manager and County Counsel. The successful CMAR shall submit the bonds in duplicate, all of which shall bear original signatures. The signature of the surety representative must be notarized.

## **5. LIQUIDATED DAMAGES**

In accordance with Government Code Section 53069.85, CMAR agrees to forfeit and pay to Owner the sum of one thousand four hundred fifty (\$1,450.00) 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.

**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 Agreement, 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 OC Public Works. The Project is under the general direction of Owner’s Board of Supervisors. The Board of Supervisors authorizes OC Public Works to be Owner’s representative in connection with the Project.

9.1.2 PROJECT MANAGER. 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 designated representative shall also coordinate any communications to or from OWNER's Architect-Engineer ("A-E") in connection with 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.

**9.2 OWNER**

Owner has the final authority 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.

- 9.2.1 The Owner and A-E shall not be responsible for or have control or charge of 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.
- 9.2.2. 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.

**9.3 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 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.

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

This Agreement 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 agreement, 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 agreement, 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 agreement 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 agreement, 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.

**11. SIGNATURE REQUIREMENTS**

The Agreement must be signed by officer(s) authorized to bind CMAR. If documentation demonstrating express Owner is not provided, then the Agreement 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:

- 1) 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.

**12. ENTIRE AGREEMENT**

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

**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.
Abbreviations	The language of specifications and other Contract Documents is of the abbreviated type in certain instances, and implies words and meanings appropriately interpreted. Singular words will be interpreted as plural and plural words will be interpreted as singular where applicable and where full context of the Contract so indicates.
Addendum/Addenda	Written or graphic instrument issued prior to the opening of Bids which corrects or changes the Contract Documents.
Agreement	The portion of the Contract Documents, signed by both Parties, that contains the Aliso & Wood Canyons Wilderness Park - New Visitors Center, Contract Price, Contract Time, Liquidated Damages, and other terms and conditions.
Application for Payment	CMAR's periodic or one-time claim for payment based on work completed.
Architect-Engineer (A-E)	Owner's Architect or Engineer of Record for the Project, whether Owner's own employee or a third-party individual or firm hired to provide A-E services.
Approve	Where used in conjunction with the Architect or Engineer's response to submittals, requests, applications, inquiries, reports and claims by the CMAR, the meaning of the term "approved" will be held to limitations of the Architect or Engineer's responsibilities and duties as specified in General Conditions. In no case, will "approved" by the Architect or Engineer be interpreted as a release of the CMAR from responsibilities to fulfill requirements of the Contract, nor as any modification to those requirements.
Board of Supervisors	Owner's governing body.
Bulletin	Written or graphic instrument issued prior to the opening of Bids which clarifies or answers general questions about the Contract Documents.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "Changes" Section of the General Conditions.

Term	Definition
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.
Construction Schedule	CMAR's initial construction schedule after it has been accepted by Owner and designated as the Project Construction Schedule, and updated by each monthly schedule update.
Contract	The complete agreement between Owner and CMAR covering the Project, as represented by the Contract Documents.
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, as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
CMAR	The Party awarded the Contract by Owner.
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.
Directed, Requested, etc.:	Where not otherwise explained, terms such as "directed," "requested," "authorized," "selected," "approved," "required," "accepted," and "permitted" mean "directed by A-E," "requested by A-E," "requested by A-E," and similar phrases. However, no such implied meaning will be interpreted to extend A-E's responsibility into the CMAR's area of construction responsibility.
Division 01 to 39 Specifications	Division 01-39 Specifications: refers to Construction Specification Institute (CSI) format the organization of specifications. CSI is an organization that keeps and changes the standardization of construction language as it pertains to building specifications.
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.)

Term	Definition
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.
Engineer or Architect of Record	The California-registered architect or engineer in responsible charge for the design of the Project and whose seal appears on the Plans and Special Provisions.
Final Payment	The last and complete payment by Owner to CMAR under the Contract as provided by the "Payments" Section of the General Conditions.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.
General Requirements	The provisions of Division 01 (1) CSI sections that shall apply to the entire work.
GMP	Guaranteed Maximum Price
GMP Item	An item of work or task listed in the GMP Schedule including the description, quantity (where applicable), and unit cost.
GMP Item, Deletable	A GMP Item that is considered part of the GMP but which may or may not be deleted from the Contract Price at any time prior to completion of the work.
GMP Item, Specialty	A GMP Item that is considered part of the GMP but not considered part of the CMAR's obligation to perform at least XX (XX%) of the work.
GMP Schedule	The detailed list of items of work with associated quantities, prices, and type of cost, submitted with each GMP.
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 8182 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), as provided by the "Termination For Convenience Of Owner" Section of the General Conditions.
OWNER	The County of Orange, a political subdivision of the State of California, and its representatives, alternate designation, COUNTY.
OCPW	Orange County Public Works, A County of Orange Agency/Department
Party / Parties	The Owner and/or CMAR.

Term	Definition
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.
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	Detailed breakdown by discipline or unit prices and costs as defined for the project in the Schedule of Values in the Construction Agreement and its General Conditions, as attached hereto.
Schedule Update(s)	CMAR's monthly update of work progress. (See the "Project Schedules" and "Payments" Sections of the General Conditions.)
Subcontractor(s)	Those contractors independently engaged by CMAR to perform portions of the work.
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. A-E STATUS**

Unless otherwise expressly stated in the Agreement between CMAR and the Owner, the A-E is responsible to the Owner for the preparation of adequate drawings, specifications, and reports within the scope of the A-E's contract. A-E services normally include checking of shop drawings, equipment submittals and material lists; recommendations to the Owner regarding proposed substitutions; furnishing consultation and advice to the Owner to clarify the intent of the drawings and specifications and on questions that may arise during construction. A-E shall have access to observe work at all times wherever it is in preparation or progress. A-E does not have the authority to act for the Owner or to stop work. Should the A-E observe work which in A-E's judgement, should be stopped to prevent damage, injury, loss, or error, A-E should notify the CMAR and the OWNER's representative without delay.

**3. 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 Owner having jurisdiction over the Project.

**4. CONTRACTOR’S LICENSE**

The contractor’s license classification for this Contract is a Class B license issued by the State of California, Contractor’s State License Board. 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 Contractors’ State License Law, Business & Professions Code Section 7000, et seq.

**4.1 LICENSED SUBCONTRACTOR**

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

**4.2 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.

**4.3 RESPONSIBILITY**

CMAR shall give personal attention to the fulfillment of the work and shall keep the work under its control. CMAR shall be equally responsible for all work required by the Contract Documents and the acts and omissions of 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.

**4.4 CONTRACTUAL RELATIONS**

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

**4.5 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 GMP except with Owner’s written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

**5. INTERPRETATION OF CONTRACT DOCUMENTS**

**5.1 PLANS AND SPECIFICATIONS**

**5.1.1** Checking: CMAR shall review all Contract Documents immediately upon receiving them and shall promptly notify OWNER of any discrepancies. CMAR shall notify Owner about the absence of a specification or detail, and such 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 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 Contract Documents or mistakes in details of work that are necessary to carry out the intent of the Contract Documents or that are customarily performed. Owner shall promptly notify CMAR in writing of the correction. If warranted, Owner shall issue a Change Order in accordance with the “Changes” Section of these General Conditions. If CMAR makes any adjustment to the work without first receiving the Owner’s written correction, such adjustment shall be at CMAR’s own risk and expense.

5.1.3 Conflicting Information: In case of conflicting information in the Contract Documents, CMAR shall bid 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 Plans and the dimensions shown therein, whether or not CMAR believes an error exists, without first obtaining Owner’s written permission for the deviation.

**5.2 PRECEDENCE OF CONTRACT DOCUMENTS**

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

The precedence shall be:

5.2.1 Permits and applicable regulations as may be provided by law or that govern the site;

5.2.2 Amendments and Change Orders;

5.2.3 Agreement;

5.2.4 Addenda and Bulletins;

5.2.5 Supplementary General Conditions;

5.2.6 General Conditions;

5.2.7 Plans;

5.2.8 Specifications; and

5.2.9 Attachments and Appendices.



## **6 PRE-CONSTRUCTION**

### **6.1 CONTRACTOR’S PRE-CONSTRUCTION OBLIGATIONS**

Prior to beginning construction and again before starting a section of work, CMAR and each subcontractor shall carefully examine all preparatory work that has been executed to receive the work. CMAR shall check carefully, by whatever means are required, to ensure that the work and adjacent, related work, will finish to proper contours, planes, and levels. CMAR shall promptly notify the Owner of any defects or imperfections in preparatory work which will in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work, and later claims of defects or delays therein will not be recognized. Under no condition shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the CMAR, who shall maintain coordination control at all times. 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.

## **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 Bidders 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 Owner’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 County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require CMAR to indemnify County Indemnitees for losses caused by 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 the 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 Contractor's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for CMAR with limits as outlined in Section 7.3.2. CMAR shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required in Section 7.3.2 of 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 any 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, the County may terminate this 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	\$3,000,000 per occurrence \$3,000,000 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

Environmental/Pollution Liability* Including Coverage for Non-Owned Disposal Sites	\$1,000,000 per claims made or occurrence
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Minimum Policy Limits and Coverage for Electrical and Site Distribution Subcontractors

Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory \$1,000,000 per occurrence
Environmental/Pollution Liability* Including Coverage for Non-Owned Disposal Sites	\$1,000,000 per claims made or occurrence

Minimum Policy Limits and Coverage for Demolition, Concrete, Rigging & Hauling and  
Equipment Subcontractors

Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory \$1,000,000 per occurrence
Environmental/Pollution Liability* Including Coverage for Non-Owned Disposal Sites	\$1,000,000 per claims made or occurrence

Minimum Policy Limits and Coverage for Roofing, Waterproofing, Framing, Flooring, Painting,  
Specialties, Fire Protection and Insulation Subcontractors'

Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory \$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

- 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, its elected and appointed officials, officers, employees and agents* as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement evidencing that the Contractor'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).

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

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents* or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

CMAR shall notify County 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 County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

If CMAR's Pollution Liability policy is a claims-made policy, CMAR shall agree to maintain coverage for two (2) years following completion of contract.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CMAR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified CMAR.

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

County 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 County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to CMAR, and County 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.

#### 7.3.5 Builder's Risk Insurance

Owner shall secure and maintain Builder's Risk insurance upon the entire Project for new construction amounting to 100% of the insurable value of the Project. The Builder's Risk policy is an All Risk policy, with the exclusion of earthquake and flood risks. CMAR and Subcontractors are included as loss payees, as their interests appear.

The Builder's Risk policy shall not be required to cover any tools, equipment or supplies, unless such tools, equipment, or supplies are part of the Project. CMAR shall be responsible for securing and maintaining appropriate insurance on any tools, equipment, or supplies that are not part of the Project.

CMAR is responsible for the entire deductible amount of any and all Builder's Risk claims against Owner's Builder's Risk policy. The deductible applies per claim, and the deductible shall not exceed \$10,000 per claim. Any loss claim under this insurance is to be coordinated with Owner.

Owner and CMAR waive all rights against each other and the Subcontractors, sub-Subcontractors, officers, and employees of each other, and CMAR waives all rights against Owner's separate contractors, if any, and their subcontractors, sub-subcontractors, officers and employees for damages caused by fire or other perils to the extent paid by the Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. CMAR shall require of its Subcontractors and sub-Subcontractors, by appropriate agreements, similar waivers, each in favor of all other parties enumerated in the preceding sentence.

#### **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 CONSTRUCTION SCHEDULES**

- 8.1.1 Construction Schedules: As part of GMP, CMAR shall submit to Owner for Owner’s review an initial job progress schedule.

Once the Notice to Proceed is issued, the Construction Schedule shall be updated to reflect the Contract Time as defined in the Agreement. 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 job progress schedule. CMAR shall prepare the Construction Schedule using the critical path format. Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of CMAR’s work. The job progress schedule shall show the sequence, duration, and interdependence of activities required for the complete performance of all of CMAR’s work.

CMAR shall include on the Construction 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 initial Construction Schedule is accepted by Owner, it will be designated as the “Accepted Construction Schedule”. An Accepted Construction Schedule is a condition precedent to Owner’s obligation to make the initial progress payment to CMAR.

- 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 Construction 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 Construction Schedule. Any request for an extension of the Contract Time must be based on the Accepted Construction 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 Construction 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, 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.

The data from the Schedule of Values shall be transferred and correspond directly to the appropriate construction activities on Construction Schedule. Owner will accept the Schedule of Values with review of the Construction Schedule. The Schedule of Values along with the Construction Schedule will be the basis for CMAR's Progress Payment Request and therefore, must be reviewed by Owner before the first Progress Payment Request is submitted to Owner.

To substantiate the accuracy of the Schedule of Values, Owner and CMAR may review such supporting data as Owner may require which includes, but is not limited to, subcontractor contracts, material contracts, supply and services contracts, etc.



**8.3 CONTRACTOR'S SUBMITTALS**

- 8.3.1 General: Include within the Construction Schedule a schedule for submittals ("submittal schedule") in accordance with Contract Time and Contract Document requirements.

CMAR shall prepare and submit a progress schedule for himself, each sub-contractor and supplier, showing anticipated dates for submittals of construction data. Schedule shall allow for lead time required for subcontractors, material and equipment manufacturers, fabricators and suppliers, delivery of materials and equipment, in sufficient time for installation without delaying any portion of the work.

- 8.3.2 Time for submittals: Each submittal must be received by the A-E in time to permit 21 calendar days for their review. If a submittal is not received in time to allow sufficient time, (calendar days) for the A-E's review without delaying construction, the CMAR shall reimburse Owner for the A-E's costs incurred by checking on an accelerated basis.

- 8.3.3 A-E or OWNER Responsibility: (1) The A-E's or Owner's responsibility for time consumed in review of construction data and any claim made by the CMAR (including Subcontractors and suppliers) that such time is excessive and has caused or will cause delay in completion of the work, will only be considered as starting from the time drawings, samples and other construction data are complete and correct in all respects and so submitted and signed as approved by CMAR. (2) Preliminary and incomplete or incorrect submittals of said drawings and samples shall not be considered as the beginning of the official approved time.

- 8.3.4 "Sufficient time" as used herein, shall mean a maximum of 21 calendar days unless approved otherwise by Owner.

- 8.3.5 Construction Data: Obtain and review all construction data and such other data as required for the coordination of the work of the CMAR and each of his subcontractors, whether such submittals are requested.

- 8.3.6 Submittal Requirements: CMAR shall submit to Owner electronic copies of all initial submittals required by the Contract Documents, including but not limited to: shop drawings, working drawings, descriptions of materials and equipment to be supplied, samples, supporting information, and other submittals (collectively "Submittals") and 2 hard copies of each approved submittal. 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 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.

- 8.3.7 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 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.

- 8.3.8 A-E's Review: Review of submittals is only to check for general conformance with the project design concept and general compliance with the Contract Documents. Responsibility will not be assumed by Owner or the A-E for any of the following:
- (1) Correctness of dimensions, details, quantities, or procedures indicated on the submittals.
  - (2) Any violation indicated on shop drawings, or other construction data, of local, county, state or federal laws, rules, ordinances, or rules and regulations of commissions, boards or other authorities or public utilities having jurisdiction.
  - (3) Any deviation made from Contract Documents requirements, even with approval from the A-E and Owner, will not relieve the CMAR from any responsibility for errors or omissions in the construction data.
- 8.3.9 Review of construction data submittals will only be performed as specifically required in the various Specification Sections.
- 8.3.10 Review of a separate item shall not indicate approval of an assembly in which the item functions.
- 8.3.11 Review of shop drawings will be general, for design, arrangement and appearance only, and shall not relieve CMAR of responsibility for accuracy of such shop drawings, dimensions, proper fitting, construction of work, providing materials required by the Contract Documents, even though such materials and their installation are not indicated on shop drawings. Review of shop drawings shall not be construed as approving departure from Contract requirements or as acceptance of any responsibility by Owner or the A-E for any errors, omissions, or discrepancies shown thereon.
- 8.3.12 No portion of the work requiring a submission shall be commenced until the submission has been reviewed and returned to the CMAR with the A-E's stamp of approval. All such portions of the work shall be in accordance with approved construction data.
- 8.3.13 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.
- 8.3.14 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.
- 8.3.15 Shop Drawing Variations:
- (1) If shop drawings show variations from Contract Documents because of standard shop practice, questions, or any other reason, make specific mention of variations in transmittal letter to the A-E as well as encircle variations or questions on shop drawings to identify and call them to the A-E's attention.
  - (2) If the CMAR has not notified the A-E in writing of variations, deviations or omissions, the CMAR will be required, at its sole expense, to repair, replace, furnish whatever materials are required, perform the work, including adjacent work of other trades affected thereby, necessary to rectify such deviations and variations, all as directed by Owner. Replacement and repair shall be mandatory in such instances, even though this occurs after shop drawings have been stamped "Review Completed" and the work in question has been completed. All work pertaining to this condition or situation shall be performed at no additional cost to the Owner.
- 8.3.16 Samples:

- (1) Samples shall be the precise item proposed to be furnished.
  - a. Submit one sample to be retained by the A-E, one to be retained by Owner, plus the number required by the CMAR for his and his subcontractor's use.
- (2) Identify each sample with the manufacturer's name, model number or type, and its intended location in the work.
- (3) Samples of value will be returned to the CMAR for use in the work after review by the A-E and Owner.
- (4) Failure of samples to conform to specific requirements may, at Owner option, constitute a bar against submission of other samples by the same manufacturer, vendor or supplier.
- (5) Acceptance of samples will not preclude rejection, prior to final acceptance of completed work, of any material upon discovery of defects in material which said sample failed to represent, even though such material or equipment has been installed or erected in place.
- (6) After samples have been reviewed, no change in brand or make will be permitted unless satisfactory written evidence is presented, to the A-E and Owner, that the manufacturer cannot make scheduled delivery of approved material, or that material delivered has been rejected and substitution of an alternate material is an urgent necessity, or that other conditions are apparent which indicate acceptance of such substitute materials to be in the best interest of the Owner.
- (7) All samples of materials requiring laboratory tests shall be tested sufficiently in advance of the time they are required to be delivered to the Project Site for: (1) A-E's review of test results, (2) re-testing and re-submittal as necessary to obtain A-E's acceptance, (3) manufacture or fabrication, and (4) delivery to Project Site without delaying the scheduled progress of the work.
- (8) Each sample shall have physically attached to it, in a manner not easy removable, a label bearing the following information:
  - a. Project identification.
  - b. CMAR's and subcontractor's identification.
  - c. Sample identification including full information as to manufacturer, model, catalog number, finish number, and other required information.
  - d. Space for A-E's review stamp.
- (9) When samples are rejected by the A-E, submit new samples immediately after notification of rejection, and mark them "Resubmitted Samples," in addition to other information required on label.
- (10) The right to require additional submission of samples of any materials or material lists is reserved, whether or not specifically mentioned in Specifications.

8.3.17 Field Samples (When required by these specifications)

- (1) Field samples (mock-ups), when required, shall be prepared at the site, at location designated by Owner's Project Manager.
- (2) Approved mock-ups will be used as the standard for all other similar work on the Project. Protect such approved mock-up sample areas at all times, until directed by Owner to remove.

8.3.18 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 Specifications and shall include but not be limited to the following:

- (1) List of Subcontractors;
- (2) List of Materials;
- (3) Manufacturer’s certifications 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;
- (4) 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.

**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.

**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) An accepted Schedule of Values and monthly Schedule Update with a narrative report (if requested), 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 Construction 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 (as requested);
- c) If requested, CMAR shall provide three copies of certified payrolls from CMAR and all 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 Schedule of Values as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Any contract work for which a unit price has been agreed upon, will be paid for at the actual quantities constructed in accordance with the Contract Documents. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the agreement, the unit price stated 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 Bid Schedule shall be for direct cost reimbursement only, unless the Bid Schedule 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 Bid Schedule 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 contractors; (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 (PCC) Section 20104.50, and pursuant to California PCC Section 9203, 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, plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. 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.

**9.2 SUBSTITUTED SECURITY**

In accordance with Public Contract Code Section 22300 and at the request and expense of CMAR, 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](http://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 CONTRACTORS**

CMAR and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors 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.

**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, improper operation or maintenance, or normal wear and tear.

**12.2 ONE-YEAR CORRECTION PERIOD**

For a period of not less than one year 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 one-year correction period shall be due and payable immediately by CMAR. The one-year correction period relates only to the specific obligation of CMAR to return to the Project site and correct Defective Work. The one-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 OBLIGATION TO REVIEW DOCUMENTS**

13.1.1 CMAR shall carefully study and compare all Contract Documents and shall at once report to Owner any error, inconsistency, or omission that CMAR may discover.

13.1.2 CMAR shall be responsible for the coordination of all trades so that all components are properly integrated into the construction. All significant conflicts in location shall be brought promptly to the attention of Owner. In the event of conflicts that cannot be anticipated and resolved by examination of the Contract Documents, the cost of changes ordered by Owner shall be compensated by Change Order.

#### **13.2 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 contractors and Owner, 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 contractor, 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 contractors working in the area.

#### **13.3 PROTECTION**

13.3.1 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.

13.3.2 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.

Security of the CMAR's material, equipment, work product and work site is the CMAR's responsibility.

- 13.3.3 Employment of a security guard for any time period (working hours or other than working hours), shall be left to the discretion of the CMAR. The CMAR shall be fully responsible for any theft or damage to any material, equipment or to any portion of the building, work, or site.
- 13.3.4 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.
- 13.3.5 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.
- 13.3.6 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.

#### 13.4 FENCES AND BARRICADES

- A. Furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessity until completion of the project.
  - a. Barricades to protect pedestrians from building construction shall be constructed of ½" painted (two coats) plywood and shall be free from projecting nails, boards or other hazards. The CMAR shall maintain barricades free from graffiti.
- B. No signs, other than those specified, shall be erected without the written approval of the Owner.
- C. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.
- D. Alternate means of fencing and barricades to protect pedestrians maybe proposed by CMAR for approval by Owner.

#### 13.5 PROJECT SIGN & NOTICE

- A. No signs or advertisements will be permitted on the Project site, except with the express permission of Owner's Project Manager.
- B. At every door and barricade separating the project work and staging areas from areas not included in the project work area, the CMAR shall provide, install and continuously maintain a construction warning sign. The 11 inch by 17 inch construction warning sign shall be approved by Owner's Project Manager and shall be plastic laminated on heavy cardstock and shall be securely affixed at eye level to the door or barricade.

- C. CMAR (if required) shall furnish and install one 4 foot by 8 foot Project sign to be located at the Project site and shall contain the following information:
- D. County Logo (in color, graphics to be provided)
- E. Board Of Supervisors (list of 5 supervisors and district)
- F. Facility & Aliso & Wood Canyons Wilderness Park - New Visitors Center:
- G. County Of Orange
- H. Architect-Engineer:.
- I. CMAR - CMAR shall submit sign layout and proposal exact location for review and approval by the Owner's Project Manager.
- J. Mounting: Mount on 2 each 4 inch by 4 inch posts. Posts shall extend a minimum of 36 inches below grade and extend a minimum of 8 feet-0 inches above finish grade. The sign shall be mounted by concealed fasteners with the base of the sign 1 foot-4 inches above finish grade. The posts shall be pressure treated wood, primed and partial whitened.

### **13.6 QUALITY OF MATERIALS AND WORKMANSHIP**

- 13.6.1 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. See Section 01400, Quality Requirements for additional requirements.
- 13.6.2 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.
- 13.6.3 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.
- 13.6.4 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.

### **13.7 SURVEYING**

- 13.7.1 CMAR has full responsibility for layout and establishment of lines and grades for execution of the work. All temporary monuments shall be substantially established and shall be protected and maintained in place by the CMAR for the duration of the work.
- 13.7.2 If any discrepancy exists between the lines and grads actually at the site and the existing lines and grades depicted on the drawings, the CMAR shall notify the County Project Manager at once, and before commencing work.

- 13.7.3 The engineering survey work need not be performed by a State licenses surveyor or civil engineer, however it shall be performed in a professional manner in accordance with the requirements, standards, and practices exercised by licenses individuals.
- 13.7.4 The surveyor shall check line, level, and plumb of every major element of the construction, and shall keep a log book recording all relevant data. The log book shall be available for review by County Representatives of the A-E at any time during construction, and it shall be submitted to the Owner along with the “as-Built” drawings, upon completion of the Project. All deviations from line/grade requirements of the Contract Documents which are accepted (not corrected) by the CMAR shall be recorded in the log book and also shall be noted on the “as-Built” drawings.

### **13.8 UTILITIES**

- 13.8.1 Location: Owner will provide CMAR with copies of documents which describe the location of known utility substructures, or will indicate in the Plans or Special Provisions those substructures (except for service connections) that may affect the work. The removal, relocation, abandonment, or installation of utilities shall be in accordance with the applicable provisions of the Contract Documents. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, CMAR shall assume that every property parcel or facility adjoining the Project will have a service connection for each type of utility. 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.
- 13.8.2 Protection: CMAR shall not interrupt the service function or disturb the support of any utility without Owner 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. Upon learning of the existence and location of any utility omitted from or represented incorrectly in the Plans or Special Provisions, CMAR shall immediately notify Owner in writing. Support or protection of the omitted or incorrectly identified utility authorized by Owner will be paid for as provided in the “Changes” Section of these General Conditions. CMAR shall immediately notify Owner and the utility Owner if any utility is disturbed or damaged. CMAR shall bear the costs of repair or replacement of any utility damaged if located in accordance with the “Location” Section, above.
- 13.8.3 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 Bid for the items of work necessitating such removals.
- 13.8.4 Relocation: When feasible, the Owners responsible for utilities within the area affected by the work 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, Owner will conduct all negotiations with the Owners and utility work will be done at no cost to CMAR, 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 Bid for the items of work necessitating such relocation. After award of the Contract, portions of utilities not accurately described in the Plans and Special Provisions that are found to interfere with the work will be relocated, altered, or reconstructed by the utility Owners. Alternatively, 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 Bid 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.

- 13.8.5 Relocation of Service Connections: The utility Owner will 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.
- 15.1 Notice: CMAR shall notify Owner of its schedule insofar as it affects the protection, removal, or relocation of utilities.
- 13.8.6 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.
- 13.8.7 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 Owner or 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.
- 13.8.8 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. Owner 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. CMAR will not be assessed Liquidated Damages for any delay caused by failure of Owner to provide for the timely removal, relocation, or protection of such existing facilities.

### **13.9 SPACE AT SITE**

CMAR shall be allowed reasonable space at the work site and shall confine CMAR's operations to the assigned space. The work shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The CMAR shall cooperate with other Contractors of the Owner and shall not commit or permit any act which will interfere with the performance of work by any other Contractor or employees of the Owner whether at the site or not.

#### **13.9.1 OPERATING HOURS AND SITE ACCESS**

Unless otherwise specified in the Contract Documents, normal operating hours are from 6:00 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 (or as agreed upon in the Accepted Construction Schedule).

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 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. CMAR may provide a temporary office for his own convenience at his sole expense. The temporary office, if desired by CMAR, shall be subject to approval of the Owner. Any temporary building shall be Class B 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 or CMAR shall submit, a location plan showing the arrangement of field offices, storage sheds, equipment storage, and staging areas for Owner and A-E review/approval.

### **13.12 PERMANENT SYSTEMS USED AS TEMPORARY FACILITIES**

When any portion of the permanent systems are in operating condition, that part of the system may be used as a temporary facility, provided that the CMAR:

- (1) Obtains Owner's approval in writing.
- (2) Assumes full responsibility for the system used.
- (3) Pays all costs for operation, maintenance, cleaning and restoration of the system.
- (4) Operates the system with the consent and supervision of the subcontractor responsible for the system's installation and ultimate performance.

### **13.13 TEMPORARY UTILITIES**

CMAR shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation. If any utilities are in place and in use by the Owner at the Project site, such utilities -- excluding telephone -- may be utilized by the CMAR at no cost, to the extent the utilities are available without impact to the Owner's operations. If Owner supplied utilities are utilized by the CMAR, the CMAR shall exercise conservation of energy and utility resources to the satisfaction of the Owner, or such provision of utilities by the Owner will be terminated at Owner's discretion.

### **13.14 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. Toilet facilities in existing County buildings shall not be used by the CMAR, sub-contractors, suppliers, workers, and/or inspectors.

### **13.15 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.

### **13.16 FIRE PROTECTION**

CMAR shall take all necessary measures to protect the building and all areas of the project site against fire. 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.

CMAR shall observe all requirements specified in the various other Sections of the Specifications related to fire safety.

**13.17 STORAGE AND WORKING SPACE**

CMAR may use the working area designated by Owner for material storage and working space. Any additional space shall be obtained by CMAR at CMAR's own expense. Locations for CMAR to store CMAR's equipment will be agreed upon during the pre-construction meeting.

**13.18 TRANSPORTATION AND HANDLING OF PRODUCTS**

CMAR shall:

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

**13.19 STORAGE AND PROTECTION OF PRODUCTS**

CMAR shall:

- 13.19.1 Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
- 13.19.2 Store sensitive products in weather-tight, climate-controlled enclosures;
- 13.19.3 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;
- 13.19.4 Store fabricated products on sloped supports above ground if such products are stored outdoors;
- 13.19.5 Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
- 13.19.6 Provide equipment and personnel to store products by methods to prevent damage;
- 13.19.7 Arrange storage of products to permit access for inspections; and
- 13.19.8 Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

**13.20 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.

**13.21 REGULATORY COMPLIANCE REQUIREMENTS**

13.21.1 Permits

- a) Project plans are approved for permit from the Orange County Planning & Development Services Agency as well as (list other approvals including but not limited to South Coast Air Quality Management District, and SWPPP). CMAR shall identify any additional 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. If required for project. CMAR shall be responsible for ensuring that all 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, except as identified elsewhere in Agreement.

- 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 contractors 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 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.

13.21.2 Contractor 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.

13.21.3 Archaeological/Paleontological Resources

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

- d) 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](http://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 Bid Schedule 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.
- e) 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.
- f) 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:
  - i. The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
  - ii. A/P shall prepare all potential finds in excavated material to the point of identification.
  - iii. Significant finds shall be preserved as determined necessary by the A/P.
  - iv. 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.
  - v. 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.
    - i. 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.
- c) 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.
- d) 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.

- e) 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.
- f) 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.

#### 13.21.4 Surface Water Protection

- g) Work is subject to the requirements of the National Pollutant Discharge Elimination System (“NPDES”) storm water regulations. NPDES regulations require the implementation of an Storm water Pollution Prevention Plan (“SWPPP”) The nature and location of the work require compliance with the SWPPP, Owner has prepared a SWPPP for this project. CMAR is responsible for obtaining copies of the site-specific SWPPP from Owner. Copies of the SWPPP and related documents may be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml).
- h) 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."

#### 13.21.5 SWPPP Implementation & Compliance

- i) CMAR is responsible for implementing and complying with the 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 SWPPP. CMAR shall designate an independent Qualified SWPPP Practitioner (QSP), who will be responsible for monitoring CMAR’s compliance with SWPPP requirements on the Project at all times.
- j) CMAR shall be responsible for providing all reports required by the SWPPP (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.
- k) 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.

- l) CMAR shall comply with all the requirements identified in the SWPPP.

### **13.22 HAZARDOUS OR CONTAMINATED MATERIALS**

- 13.22.1 At the start of project work Owner will provide CMAR with all known documentation of hazardous materials including but not limited to Hazardous Materials Assessments and State Mandated reports on asbestos containing building materials. The project requires CMAR to be responsible for work related to hazardous materials;
- 13.22.2 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.
- 13.22.3 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.
- 13.22.4 CMAR must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of Owner.
- 13.22.5 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.
- 13.22.6 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.
- 13.22.7 Owner has the Owner to perform inspections of the CMAR's work area at any time to ensure CMAR is compliant with all applicable regulations.
- 13.22.8 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.
- 13.22.9 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.

- 13.22.10 CMAR shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.22.11 Maintenance Facilities and Work Area: CMAR shall maintain its equipment in an area designated 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 an 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.
- 13.22.12 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.
- 13.22.13 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.

### **13.23 FUGITIVE DUST EMISSION CONTROL**

Contractor shall comply with SCAQMD Rule 403 including, if applicable to prepare and submit to County and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. Contractor shall also notify OWNER of any condition that could lead to noncompliance with the Rule 403 requirements. If a Fugitive Dust Emissions Control Plan is required pursuant to Rule 403, Contractor may not conduct any activities governed by SCAQMD Rule 403 until OWNER has accepted Contractor's Plan and the Plan is accepted by SCAQMD. If Contractor fails or refuses to immediately correct any noncompliance with the provisions of this Section, OWNER may terminate Contractor'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 Contractor's right to proceed with the work is terminated, Contractor and the Contractor's sureties shall be liable for any damage to the OWNER resulting from Contractor's refusal or failure to complete the work within the specified time.

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

### **13.24 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.

### **13.25 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.

### **13.26 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 CHANGE ORDERS**

### **14.1 CHANGE ORDERS**

Owner may, at any time, by written order, and without notice to the sureties, make changes to the Contract Documents if within the general scope of the Project. Changes made pursuant to this section are only too utilized if the appropriate Contingency fund has been exhausted. If such changes cause an increase or decrease in the CMAR's cost, or the time required for performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly by Owner and CMAR.

14.1.1 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.

14.1.2 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 Construction 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.

14.1.3 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 2% of above items and CMAR shall provide documentation demonstrating it will actually incur

an increase in insurance costs directly attributable to the change, if demonstrated, we can pay more).

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.

14.1.4 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 15% 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 15% 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 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. Owner will not pay any overhead or profit for omitted work.
- i) Bond and insurance (2% of above items , if demonstrated, County can pay more).

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.

- 14.1.5 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.
- 14.1.6 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 Construction Schedule.
- 14.1.7 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 Construction Schedule.

- 14.1.8 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.
- 14.1.9 Overhead and Profit: CMAR shall receive a maximum 15% 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 15% 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 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. 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.
- 14.1.10 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.
- 14.1.11 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 Bid 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 Bid 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.

- j) 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 Bid quantity by more than 25%, then payment for the quantity in excess of 125% of the Bid 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.
- k) 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 Bid 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 Bid quantity at the Contract Unit Price.
- l) 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.

## 15 DELAYS DUE TO WEATHER AND FORCE MAJEURE

15.1.1 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.

- 15.1.2 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.
- 15.1.3 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.
- 15.1.4 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.
- 15.1.5 CMAR shall not be entitled to any extension under this Section if the unforeseen circumstances occur beyond the Contract Time.

**16. CONDITIONS AFFECTING THE WORK**

- 16.1.1 Existing Site Conditions: Information regarding the work site represented in the Plans and Special Provisions is believed to be correct, but 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.
- 16.1.2 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 from reviewing any available records of exploratory work furnished by Owner or 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.

- 16.1.3 Information on Site Conditions

- 16.1.4 General: Any information obtained by the Owner regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection upon request. Such information is offered as supplementary information only and not part of the Contract Documents. Owner assumes no responsibility for the completeness or interpretation of such information.
- 16.1.5 Topographic Maps: Topographic maps were used in the Project design. Bidders may inspect such maps upon request to the Owner, or may obtain copies upon payment of the cost to reproduce the copies.
- 16.1.6 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 subsurface investigation.
- 16.1.7 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:
- 16.1.8 Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents;
- 16.1.9 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
- 16.1.10 Material differing from that represented in the Contract Documents which CMAR believes may be hazardous waste pursuant to Health & Safety Code Section 25117.
- 16.1.11 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.



**16.1 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.

**16.2 DIRECTOR'S OWNER**

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.

**16.3 MINOR CHANGES IN THE WORK**

Owner shall have Owner 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.

**17 TERMINATION**

**17.1 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.

**18 TERMINATION FOR CAUSE**

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.

18.1.1 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.

- 18.1.2 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.
- 18.1.3 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.
- 18.1.4 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.
- 18.1.5 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 contractor in the performance of a contract with Owner.
- 18.1.6 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.

## **19 DISPUTES AND CLAIMS**

### **19.1 DISPUTES AND CLAIMS**

- 19.1.1 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 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.
- 19.1.2 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 Section 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).
- 19.1.3 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.
- 19.1.4 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.

## **20 OCCUPANCY**

### **20.1 PARTIAL OCCUPANCY**

- 20.1.1 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.
- 20.1.2 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.

- 20.1.3 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 contractors, 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.

**21 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 "One-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.

**22 MISCELLANEOUS PROVISIONS**

**22.1 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.

**22.2 ORAL MODIFICATION**

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

**22.3 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).

**22.4 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.

## **22.5 PUBLIC RECORDS ACT**

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.

## **22.6 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.

## **22.7 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

contractor 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 contractor, 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.

**22.8 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.

**22.9 WRITTEN NOTICE**

Any notice required under the Contract Documents to be given to Owner by CMAR shall be in writing and delivered to the County via U.S. mail, addressed as follows:

OC Public Works/OC Facilities Design and Construction/A&E Project  
Management  
TBD – Senior Project Manager  
re: Aliso & Wood Canyons Wilderness Park – New Visitors Center  
1143 East Fruit Street  
Santa Ana, California 92701

Notice via electronic mail is insufficient.

\*\*\*END OF GENERAL CONDITIONS\*\*\*