



NORTHERN ARIZONA UNIVERSITY

**DESIGN PROFESSIONAL AGREEMENT
(CONSTRUCTION MANAGER AT RISK FORM)
(OPERATING MANUAL FORM)**

NAU PROJECT NAME: 2009 - 2010 Annual Request for Qualifications (ARQ)

NAU PROJECT NUMBER: 11.160.091

DATE ISSUED:

OWNER

ARIZONA BOARD OF REGENTS

for and on behalf of

NORTHERN ARIZONA UNIVERSITY

DESIGN PROFESSIONAL

**• DESIGN PROFESSIONAL AGREEMENT •
(CONSTRUCTION MANAGER AT RISK FORM)(OPERATING MANUAL FORM) ©
• OCTOBER, 2008 EDITION, Amended June 4, 2010, May 25, 2011 and July 1, 2011 •**

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**AGREEMENT BETWEEN OWNER
AND
DESIGN PROFESSIONAL
(Construction Manager at Risk Form)
(Operating Manual Form)**

AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL, entered into as of _____, by and between the Arizona Board of Regents, for and on behalf of Northern Arizona University ("**Owner**") and ____ ("**Design Professional**" or "**DP**").

SECTION 1. PROJECT

1.1 Project Title: 2009 – 2010 Annual Request for Qualifications (ARQ)

1.2 Project Number: 11.160.091

1.3 Project Location: Northern Arizona University, Flagstaff, Arizona, or as identified in individual supplemental authorization amendments.

1.4 Project Scope: Architecture, Central Plant / Chiller, Civil Engineering, Commissioning, Constructability Review, Construction Administration, Construction Inspection, Construction Management, Electrical Engineering, Facility Audits / Inspections, Land Surveying, LEED Accredited Eng / Architect, Master Planning, Mechanical Engineering, Partnering / Facilitation, Programming / Space Planning, Project Estimating, Project Scheduling, Specifications, Structural Engineering and Value Engineering Services [prior disciplines listed are examples – insert disciplines from firm submittal] as required. Individual fee proposals are to be submitted and supplemental authorization amendments will be issued per each job scope.

SECTION 2. GENERAL

2.1 The Operating Manual for Construction Manager at Risk Project ("**Operating Manual**") is attached hereto as **Exhibit A** and is incorporated herein by reference.

2.2 This agreement shall be in effect for the time period July 1, 2009 through June 30, 2012, with extensions on a case-by-case basis to allow for completion of project-specific services under separate Supplemental Authorizations issued from this agreement prior to June 30, 2012. Provided however, the Owner reserves the sole right to terminate this agreement at any time prior to June 30, 2012 and offer a new agreement to the DP, utilizing the DP ARQ submittal resulting from 2009-2010 ARQ.

2.3 The DP Contract Documents are listed in the Operating Manual.

2.4 N/A

2.5 The DP Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict. In the event of any inconsistency, conflict or ambiguity, the DP Contract Documents shall take precedence in the order in which they are listed in the definition of that term in the Operating Manual.

2.6 N/A

2.7 The DP Contract Documents form the entire agreement between **Owner** and **DP** relating to the Project, are hereby incorporated herein by reference and by incorporation herein are as fully binding on the parties as if repeated herein. The DP Contract Documents supersede all prior discussions and negotiations. The DP Contract Documents may be amended or modified only in writing executed by **Owner** and **DP**.

2.8 If not specifically defined, terms, words and phrases in the DP Contract Documents will have their ordinary and common meaning, with undefined words, phrases and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.

2.9 All terms defined in the Operating Manual or in other DP Contract Documents will have the same meanings

Owner and Design Professional - CMAR Form-Operating Manual Form

2009 - 2010 ARQ #11.160.091

Rev. 10/01/08, 06/04/10, 05/25/11 and 07/01/11

when used herein. The following terms shall have their respective designated meanings when used in the DP Contract Documents.

"DP Basic Services" means all obligations and activities of the DP in the DP Contract Documents and compliance with all terms and conditions in the DP Contract Documents applicable to the DP, but excluding the DP Additional Services.

"DP Additional Services" means that obligations and activities of the DP described in **Section 5** below, as it may be amended and modified from time to time in writing executed by DP and Owner.

"DP Basic Compensation" means the compensation provided in this Agreement for the DP Basic Services. DP Basic Compensation includes the fees of all DP Consultants. DP Basic Compensation also includes the fees of each Special DP Consultant, unless and to the extent Owner has agreed separately in writing to pay part of all of the fees of such Special DP Consultant.

SECTION 3. AGREEMENT OF DESIGN PROFESSIONAL AND OWNER

3.1 DP agrees to perform all obligations and activities of the **DP** under the DP Contract Documents and to comply with all terms and conditions applicable to **DP** under the DP Contract Documents.

3.2 Owner agrees to perform all obligations and activities of **Owner** under the DP Contract Documents and to comply with all terms and conditions applicable to **Owner** under the DP Contract Documents.

3.3 Subject to any specific modifications, additions or deletions contained herein and/or attached hereto, the DP Basic Services:

- (i) shall be rendered in phases consisting of the Design Phase (which includes of the Program Development subphase, the Schematic Design subphase, the Design Development subphase and the Construction Documents subphase) and Construction Phase, which includes, among other activities, close out and occupancy actions;
- (ii) include the actions of the **DP** described in the DP Contract Documents;
- (iii) shall support as necessary and be coordinated with the activities of the **CMAR** as described in the Operating Manual; and
- (iv) include (but are not limited to) complete architectural, landscaping, civil, structural, mechanical and electrical engineering services for each subphase of the Design Phase. The phases and subphases are to be performed in the sequence set forth in **Section 3.3(i)** above, and under no circumstances shall the **DP** proceed with the next phase or subphase of the DP Basic Services without prior written authorization from the **Owner**.

SECTION 4. DESIGN PROFESSIONAL RESPONSIBILITY

4.1 The **DP** shall be responsible for and shall indemnify, hold harmless and, if elected by **Owner**, defend the **Owner**, the Arizona Board of Regents, and the State of Arizona from and against any and all claims, demands, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' and paralegal fees and costs and expenses of administrative proceedings and litigation and appeals) arising or resulting from any errors or omissions in the documents prepared by **DP** or any **DP Consultant** for **Owner** ("**Errors and Omissions Amounts**").

4.2 For all purposes of this **Section 4**, the other provisions in this Agreement and the other DP Contract Documents the phrase, "documents prepared by **DP** or any **DP Consultant** for **Owner**", shall include, without limitation, (i) all documents actually prepared by **DP** and submitted to **Owner** and (ii) all documents prepared by any **DP Consultant** or any other person at the request of **DP** and submitted to **Owner** in connection with the Project, regardless of the degree, if any, of **DP's** actual involvement in the preparation of the documents. The phrase, "documents prepared by **DP** or any **DP Consultant** for **Owner** also includes, without limitation, the Construction Documents and the other Design Submission Documents.

4.3 The **DP** acknowledges that errors and omissions or either in the documents prepared by **DP** or any **DP Consultant**

for the **Owner** can result in claims, demands, losses, damages, liabilities, costs and expenses for the **Owner** and the others named above. The **Owner** acknowledges that no set of design documents can be completely free from errors and omissions. Therefore, notwithstanding the assignment of responsibility to the **DP** and the **DP's** agreement to indemnify and defend above, the **Owner** and the others named above agree to absorb and agree to not make claims against the **Design Professional** for Errors and Omissions Amounts selected by **Owner** up to an aggregate amount equal to two percent (2%) of the Actual Costs of Construction Work ("**Owner's Share of Errors and Omissions Amounts**"). This is not a release of the obligations to indemnify and defend; it is only an agreement by **Owner** to not make claims for the Owner's Share of Errors and Omissions Amount. The **Design Professional** shall indemnify and defend as provided above for any and all Errors and Omissions Amounts in excess of the Owner's Share of Errors and Omissions Amounts.

4.4 The **DP** acknowledges and agrees that the contractual obligations of the **DP** under this **Section 4** (i) are in addition to the **DP's** responsibility and liability under applicable law for errors and omissions in the documents prepared by **DP** or by any **DP Consultant** for **Owner**, (ii) are not a substitute for or waiver of responsibility and liability under applicable law, and (iv) shall not affect or impair **DP's** responsibility and liability under applicable law. In addition, the agreement by **Owner** and others in this **Section 4** to absorb and to not make claims for the Owner's Share of Errors and Omissions Amounts (I) shall apply only to **DP's** contractual obligation under this **Section 4** to be responsible for and to indemnify and to defend as to Errors and Omissions Amounts, and (II) shall not affect or impair the responsibility and liability of the **DP** under applicable law for errors or omissions in the documents prepared by **DP** or any **DP Consultant** for **Owner**. However, to be consistent with the limitation on **DP's** contractual responsibility for Errors and Omissions Amounts above in this **Section 4**, the **Owner** agrees that the aggregate amount **Owner** will collect from **DP** and **DP's** professional liability insurers will not exceed an amount equal to (i) Errors and Omissions Amounts, less (ii) Owner's Share of Errors and Omissions Amounts. This is not a release of responsibility and liability; it is only an agreement by **Owner** to limit the amount collected by **Owner**.

4.5 **Owner** shall deliver to **DP** a statement of the amount that is two percent (2%) of the Actual Costs of Construction Work and a list of Errors and Omissions Amounts that **Owner** has absorbed or will absorb in whole or in part.

4.6 The **DP** acknowledges and agrees that review, comment on and approval by the **Owner** and involvement of the **CMAR** and the **Owner** during the Design Phase (including, without limitation, recommendations by the **CMAR** or **Owner** as to the design) or during the Construction Phase, in no way relieve the **Design Professional** of the responsibility described above. The **DP** and the **Owner** will cooperate in the resolution of all matters covered by this **Section 4** so as to minimize any detrimental impact upon the Project. However, such cooperation shall not be deemed a waiver of any rights the **Owner** may have relating to the **DP**. Any claims or disputes between the **DP** and the **Owner** related to this **Section 4** will be resolved as provided in **Section 11** of this Agreement.

4.7 Acceptance by the **Owner** of the Design Submission Documents and any other documents provided to **Owner** by **DP** and the **DP's** Estimates of Probable Construction Costs shall not relieve **DP** from any responsibility for errors or omissions nor from any duties to indemnify and hold the **Owner** and others harmless, nor from any other obligation of **DP** under the **DP Contract Documents** or from any liability under applicable law. In addition, involvement of the **Owner** and the **CMAR** in the design development and adoption by the **DP** of any recommendations by the **Owner** or **CMAR** into the **DP's** design will not relieve the **DP** from any responsibility for professional errors and/or omissions nor from any duties to indemnify and hold the **Owner** harmless or from any other obligations of the **DP** under the **DP Contract Documents** or from any liability under applicable law.

4.8 Approval by the **Owner** wherever required in the **DP Contract Documents** shall not relieve the **DP** of responsibility (i) for errors and omissions, or (ii) for compliance with the **DP Contract Documents**.

4.9 The **DP** agrees that **DP** shall have the same legal responsibility to the **Owner** as the **Owner** has, or may have, to others arising out of, or resulting from, any acts or omissions of the **DP**. Without limiting the foregoing, the above obligation to indemnify and defend includes claims, demands, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' and paralegal fees and costs and expenses of administrative proceedings and litigation and appeals) made against **Owner** or incurred by **Owner** in respect of **Owner's** legal responsibility to others.

SECTION 5. ADDITIONAL SERVICES

5.1 The following additional services shall be provided only when authorized by the **Owner** in writing in advance of performance and shall be paid for by the **Owner** in addition to the DP's Basic Compensation.

5.1.1 Providing financial feasibility or other special studies.

5.1.2 Providing services relative to future facilities, systems, and equipment, which are not intended to be constructed during the Construction Phase.

5.1.3 Providing interior design and all other similar services required for or in connection with the selection, procurement or installation of movable furniture, furnishings, and related equipment if not expressly contemplated by the DP Contract Documents.

5.1.4 Providing consultation concerning replacement of any work damaged by fire or natural causes or forces majeure during the Construction Phase.

5.1.5 Retaining services of a competent surveyor or engineer to provide any special inspections or tests, as required by code or prudent practice, during the Construction Phase.

5.1.6 Providing extraordinary services made necessary by the default of the **CMAR**.

5.1.7 Providing assistance required by the **Owner** in judicial, quasi-judicial, administrative, or legislative hearings or proceedings arising out of the design and/or construction agreement(s) when such proceedings do not relate in any way to the actions or omissions of the **DP**.

5.2 If the **Owner** and the **DP** agree on more extensive representation at the Site than is described in **Section 3.4** of the Operating Manual, the **DP** shall provide one or more full-time Project Representatives. Such full-time Project Representatives shall be selected, employed and directed by the **DP**, and the **DP** shall be compensated for such services as mutually agreed in writing between the **Owner** and the **DP**.

5.3 Any full-time **DP Project Representatives** or replacements shall be subject to prior approval by the **Owner**. The **Owner** reserves the absolute right to reject or require replacement of any **DP Project Representatives**.

5.4 The **DP** shall not engage, contract with or use the services of any **DP Consultant** ("**Special DP Consultant**"), other than **DP Consultants** included in the original **DP** team identified to Owner in **DP's** response to **Owner's** request for qualifications or otherwise initially identified to **Owner**, without obtaining the prior written approval of the **Owner**. The **DP** shall submit to the **Owner** for its approval a proposal of the scope of services to be provided by each **Special DP Consultant**, with the latter's acknowledgment thereof. No provision of the DP Contract Documents and no approval by the **Owner** of the scope of services to be provided by the **Special DP Consultants** shall be construed as an agreement between the **Owner** and any **Special DP Consultant** or in any way affect the responsibilities of the **DP** hereunder. Unless otherwise agreed to in writing by the **Owner**, the fees of any Special DP Consultants retained by the **DP** shall be deemed covered by the DP Basic Compensation to be paid by the **Owner** to the **DP**.

SECTION 6. REIMBURSABLE EXPENSES

All services, travel, and supplies necessary or useful to the **DP** in carrying out the DP Contract Documents are included in the DP Basic Compensation and shall not be separately reimbursable unless specifically identified and approved by the **Owner** in writing in advance of being incurred.

SECTION 7. DESIGN PROFESSIONAL'S ACCOUNTING RECORDS

7.1 The **DP's** records pertaining to its services on the Project shall be kept on a generally recognized accounting basis and shall be available to the **Owner** or his authorized representative upon request for five (5) years from the date of Final Payment to the **CMAR**.

7.2 The **DP** shall retain and require all **DP Consultants** to retain, for inspection and audit by the **Owner** or the State of Arizona all books, accounts, reports, files, and other records relating to the bidding and performance of the CMAR Construction Contract Documents for a period of five (5) years after its final completion. Upon request by the **Owner**, the original or a legible copy of the originals of all such records shall be produced by the **DP** at the address designated by the **Owner**. The cost of any copying requested by **Owner** or made necessary to **DP** by **Owner's** request for production of originals shall be paid by **Owner**.

SECTION 8. INSURANCE AND INDEMNITY

8.1 Without limiting any liability or any other obligations of the **Design Professional** either:

- (i) the **DP** shall obtain and maintain and the **DP** shall cause each **DP Consultant** to obtain and maintain the insurance coverages listed below and the **DP** shall comply and cause each **DP Consultant** to comply with the requirements of this **Section 8**; or
- (ii) the **DP** shall obtain and maintain the insurance coverages listed below covering the **DP** and each **DP Consultant** and the **DP** shall comply with the requirements of this **Section 8**.

Coverage will be provided with forms and insurers authorized to do business in the State of Arizona in forms acceptable to the **Owner** until all of the **Design Professional's** obligations under the DP Contract Documents are satisfied. All insurers must be authorized to do business in the State of Arizona by the Arizona Department of Insurance and possess a current AM Best, Inc. rating of at least A - VII.

8.2 Worker's Compensation Insurance. Worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the **Design Professional**, its employees, or both, engaged in the performance of services under the DP Contract Documents. In addition, employer's liability insurance with the minimum limit of \$500,000 for each accident, \$500,000 disease for each employee, and \$1,000,000 disease policy limit. Evidence of qualified self-insurance status satisfactory to and approved by **Owner** may suffice for this section.

8.3 General Liability Insurance. Commercial general liability insurance with minimum limits of **\$1,000,000** per occurrence, and minimum unimpaired Products and Completed Operations aggregate and General Aggregate minimum limits of **\$2,000,000**. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196 issued on an Occurrence basis. The policy shall include coverage for Bodily Injury, Broad Form Property Damage (including completed operations); Personal Injury; Blanket Contractual Liability; Products and Completed Operations, which coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in the DP Contract Documents; and Fire Legal Liability. Said policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to eliminate third-party action over claims. In the event the General Liability insurance policy is written on a "**claims made**" basis, coverage shall extend for two (2) years past completion and acceptance of the work or services as evidenced by annual certificates of insurance delivered to the **Owner**.

8.4 Automobile Liability Insurance. Commercial/business automobile liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, with respect to claims arising from the ownership, maintenance or use of any auto assigned to or used in the performance of the DP Contract Documents.

8.5 Professional Errors & Omissions Insurance. Professional liability or errors and omissions insurance with minimum limits of **\$1,000,000.00** each occurrence, claim, wrongful act or loss and an unimpaired aggregate limit of **\$2,000,000.00** with respect to the DP Contract Documents. The Retroactive Coverage Date (if the policy is written on a "claims made" form) shall be the same as the effective date of the DP Contract Documents. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of work of the DP Contract Documents. In the event that the professional liability or errors or omissions insurance is written on a "claims made" basis, coverage shall be maintained for two (2) years past completion and acceptance of the work or services as evidence by annual certificates of insurance delivered to the **Owner**.

**Minimum Required Insurance Limits
Based on Total Construction Costs**

Construction Budget	DP Professional Liability (E&O) Minimum Coverage	Minimum Aggregate
\$0 - \$1,000,000	Value of project budget minimum \$1,000,000	\$2,000,000
\$1,000,000 to \$5,000,000	\$1,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$2,000,000	\$3,000,000
\$10,000,000 to \$20,000,000	\$3,000,000	\$3,000,000
\$20,000,000 to \$30,000,000	\$4,000,000	\$4,000,000
\$30,000,000 to \$40,000,000	\$5,000,000	\$5,000,000
above \$40,000,000	\$6,000,000	\$6,000,000

8.6 Policy Requirement. The policies required by **Sections 8.3** (General Liability) and **8.4** (Automobile Liability) shall be endorsed to include “the State of Arizona, the Arizona Board of Regents (ABOR), Northern Arizona University, their agents, regents, officers, and employees as additional insureds as to the acts or omissions of the Design Professional and its officers, employees, and agents” and shall stipulate that the insurance afforded the **Design Professional** shall be primary insurance and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents (ABOR), Northern Arizona University, their agents, officers, or employees, if any, shall be excess and not contributory to the insurance provided by the **Design Professional**.

8.7 Proof of Insurance. An original certificate of insurance evidencing the coverages required herein and acceptable to the **Owner** shall be filed with the **Owner** as evidence that policies providing the required coverages' conditions of limit are in full force and effect prior to the **Design Professional** performing any work on the Project. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify the DP Contract Documents or be an annual or periodic certificate stating that it covers any and all projects or work performed by the **Design Professional** during said period and shall contain provisions that coverage afforded under the policies will not be canceled, terminated, or materially altered until at least thirty (30) days prior written notice has been given to the **Owner**. The certificates for insurance for the coverages required by **Sections 8.2** and **8.3** shall contain a waiver of subrogation as required in **Section 8.10** and statement that the following are additional insureds under the policy to the extent of the acts and omissions of the **DP** and its officers, employees and agents: the State of Arizona, the Arizona Board of Regents, Northern Arizona University and their officers, employees and agents. Certificates of insurance should be addressed as follows:

Capital Assets and Services
State of AZ, AZ Board of Regents and NAU
Box 6016
Flagstaff, Arizona 86011

Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the policies and/or endorsements required in the DP Contract Documents. **Owner** shall not be obligated to review same or to advise **DP** of any deficiencies in such policies and endorsements, and such receipt shall not relieve **DP** from, or be deemed waiver of, **Owner's** right to insist on strict fulfillment of **DP's** obligations under the DP Contract Documents.

8.8 Failure to Provide or Maintain Insurance. Failure on the part of the **Design Professional** to procure or maintain the required insurance shall constitute a material breach of the Contract Documents upon which the **Owner** may immediately terminate the DP Contract Documents, or at its discretion procure new or renew such insurance and pay all premiums in connection therewith, and all monies so paid by the **Owner** shall be repaid by the **Design Professional** to the **Owner** upon demand, or the **Owner** may offset the cost of such premiums together with interest at the appropriate rate against any money due the **Design Professional** from the **Owner**. Costs for coverages maintained by the **Design Professional** in excess of those required shall not be charged to the **Owner** without prior written approval of the **Owner**.

8.9 Authorization to Obtain Information. The **Owner** may, and the **Design Professional** hereby authorizes the **Owner** to, request and receive directly from insurance companies utilized by the **Design Professional** in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of the **Owner**.

8.10 Waiver. Insurers providing required insurance coverages hereby waive all rights of subrogation and all other rights to recover against the State of Arizona, the Arizona Board of Regents, Northern Arizona University and their agents, regents, officers and employees. Each required insurance policy and each certificate of insurance shall contain a waiver of subrogation by each insurer providing required insurance coverages. This **Section 8.10** does not apply to the insurer providing professional liability or errors and omission insurance.

8.11 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the **Owner**.

8.12 Self-insurance. The policies specified herein may provide coverage, which contain deductibles or self-insured retention. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to **Owner** under such policies. The **DP** shall be solely responsible for deductible and/or self-insured retention, and **Owner**, at its option, may required the **DP** to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

8.13 General Indemnity by Design Professional. The **Design Professional** shall indemnify, defend and hold harmless the **Owner**, the State of Arizona, the Arizona Board of Regents, Northern Arizona University and their officers, regents, directors, employees and agents from and against any and all claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney's fees and litigation costs and expenses) to the extent arising from any negligent acts or omissions (including, without limitation, willful misconduct) of the **DP**, the **DP Consultants** and their respective officers, employees, agents, subcontractors or independent contractors in the course of the Project. This indemnity does not cover errors or omissions in any of the documents prepared by the **DP** for the **Owner**. Those errors and omissions are covered by **Section 4** herein. This indemnity shall not be construed to include claims, lawsuits, liabilities, losses, damages, costs and expenses to the extent arising or alleged to have arisen from the negligent acts or omissions (including, without limitation, willful misconduct) of **Owner**, the State of Arizona, the Arizona Board of Regents, Northern Arizona University or any of their officers, regents, directors, employees and agents.

Please see **Section 4.1** of the Operating Manual for definitions of Environmental Law, OSHA, Hazardous Substance, Hazardous Waste and CMAR Release. The indemnity in this **Section 8.13** shall include, without limitation, any claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney's fees and litigation costs and expenses) arising from: (i) any violation of Environmental Law or OSHA by DP or any DP Consultant relating to the Project; (ii) any claim by any officer, employee, agent, independent contractor or authorized representative of DP or any DP Consultant of personal injury, death or property damage arising from any failure by DP or any DP Consultant to comply with Environmental Law or OSHA or from any failure by DP or any DP Consultant to comply with **Section 4.3** of the Operating Manual; or (iii) any release of any Hazardous Substance on Owner's property to the extent caused by DP or any DP Consultant.

8.14 Intellectual Property Indemnity by Design Professional. The **Design Professional** shall indemnify, defend and hold harmless the **Owner**, the State of Arizona, the Arizona Board of Regents, Northern Arizona University and their officers, regents, directors, employees and agents from and against any and all claims, lawsuits, losses, damages, costs and expenses (including, without limitation, attorney's fees and litigation costs and expenses) to the extent arising from any claim that the documents or any part of the documents prepared by the **DP** or any **DP Consultant** for the **Owner** or that the Project or any part of the Project constructed in accordance with the documents prepared by the **DP** or any **DP Consultant** for the **Owner** infringe on any proprietary rights or United States patent or copyright now or hereafter issued or existing.

SECTION 9. OWNERSHIP OF DOCUMENTS

9.1 The plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the **DP** pursuant to the DP Contract Documents shall be the property of the **Owner**, including, without limitation, the right to use same on **Owner's** other projects without additional cost to the **Owner**. The **DP** shall maintain file copies of those documents, drawings and/or other products required by law or the standards of professional practices.

9.2 In the case of future reuse of the Construction Documents by the **Owner**, the **DP's** name and seal shall be removed, and the **DP** shall not be liable to the **Owner** or third parties in their reuse. The **Owner** agrees to add the **DP** as an additional insured under the **Owner's** self-insurance program for this sole purpose.

9.3 By execution of the DP Contract Documents, the **DP** assigns all copyright ownership and other intellectual property interest in the Schematic Design Documents, the Design Development Documents, the Construction Documents and all other documents prepared by the **DP** or any **DP Consultant** for the **Owner** under the DP Contract Documents and the completed Project to the **Owner** and further agrees to execute, and to cause any **DP Consultant** to execute, any separate assignment agreement necessary to implement such assignment.

9.4 Owner grants to **DP** a royalty-free, non-exclusive, unlimited and worldwide license to use standards, conventions, and details of the design in the Construction Documents, provided that use of the standards, conventions, and details in any other single project shall not in the aggregate result in the use of the entire design in the Construction Documents or a major part of the design in the Construction Documents.

SECTION 10. NO ASSIGNMENTS

The **DP** shall not assign, sublet or delegate his obligations under the DP Contract Documents without the prior written consent of the **Owner**.

SECTION 11. DISPUTES AND REMEDIES

11.1 Except as otherwise provided in **Section 11.3** and **Section 11.5**, the **DP** hereby agrees that all disputes and disagreements and claims and controversies relating to the Project involving **Owner** or **DP** and all claims made by the **Owner** against the **DP** and by the **DP** against the **Owner** in respect of the DP Contract Documents, including, without limitation, controversies based on breach of contract, mistake, misrepresentation, contract modification or rescission or any other claim which arises under or by virtue of the DP Contract Documents shall be resolved in the following manner. Initially, appropriate representatives of the **Owner** and the **DP** shall meet and attempt to resolve the matter. If either party believes that the matter will not be able to be resolved by the **Owner** and **DP** representatives, the party may request an attempt to resolve the matter through any partnering procedures to which **DP**, **Owner** and **CMAR** have agreed for the Project. If there are no partnering procedures for the Project or if the partnering procedures are exhausted and there is no resolution, the matter shall be handled in accordance with **Arizona Board of Regents Policy Section 3-809(C)**, as amended or superseded, which at that point shall be the parties' sole remedy. By submitting a proposal or its qualifications for this Project, the **DP** agrees to be bound by **ABOR Policy Section 3-809(C)** and the other procedures described in this **Section 11** and waives any objections to those procedures.

11.2 Unless otherwise agreed in writing, the **DP** shall carry on the services under the DP Contract Documents and maintain its progress during resolution of any disputes or disagreements and during any claims and controversy proceedings, and the **Owner** shall continue to make payments to the **DP** in accordance with the DP Contract Documents to the extent the payments are not the subject of the dispute, disagreement, claim or controversy.

11.3 Any dispute, disagreement, claim or controversy involving the **DP** or any of **DP Consultant** and also involving the **CMAR** or any **Subcontractor** of the **CMAR** shall be handled as provided for such matters in the CMAR Design

Phase Contract Documents or the CMAR Construction Contract Documents, as applicable, even if the matter involves the **Design Professional** or any **DP Consultant**. As to such matters the **DP** agrees to be subject to the procedures in the CMAR Design Phase Contract Documents or the CMAR Construction Contract Documents, as applicable.

11.4 DP and Owner agree that all other parties involved in any claim, controversy, dispute or disagreement relating to the Project may be made parties to any process, proceeding or litigation, and to this end, both **DP** and **Owner** will include appropriate provisions in all contracts they execute with other parties in connection with this Project, and **DP** will require all **DP Consultants** to include appropriate provisions in all contracts they execute with other parties in connection with this Project, requiring attendance and participation in any such process, proceeding or litigation. **DP** and **Owner** expressly agree that any dispute resolution proceeding initiated pursuant to the DP Contract Documents may be joined or consolidated with any dispute resolution proceeding involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both **DP** and **Owner** will include appropriate provisions in all contracts they execute with other parties in connection with the Project, and **DP** will require all **DP Consultants** to include appropriate provisions in all contracts they execute with other parties in connection with the Project, to require such joinder or consolidation.

11.5 The parties agree that should a dispute arise between them concerning this Agreement and no party seeks affirmative relief other than money damages in the amount of Fifty Thousand Dollars (\$50,000) or less, exclusive of interest, costs and attorneys' fees, the parties shall submit the matter to arbitration pursuant to the Revised Uniform Arbitration Act, A.R.S. §12-3001 et seq. (the "Act"), whose rules shall govern the interpretation, enforcement, and proceedings pursuant to this section. Except as otherwise provided in the Act, the decision of the arbitrator(s) shall be final and binding upon the parties.

11.6 Any dispute, disagreement or ambiguity concerning the duties or obligations of the **DP** as described in the DP Contract Documents and the duties or obligations of any other person or legal entity providing services or materials or construction on this Project shall be resolved as provided in this **Section 11**.

SECTION 12. TERMINATION OR SUSPENSION

12.1 The **Owner** may suspend or terminate the Project at any time for the convenience of the **Owner**. If **Owner** terminates the Project, **Owner** will have the right to suspend or terminate this Agreement and the other DP Contract Documents. Upon written notice of suspension or termination the **DP** shall immediately cease all work and not incur any further costs or expenses except as expressly permitted by the **Owner** in writing. If the Project is suspended for more than one calendar year through no fault of the **DP**, the **DP** shall be paid for work actually performed and the DP Contract Documents shall terminate. Otherwise, the **DP** shall recommence work upon written notice from the **Owner** and the DP Contract Documents shall remain in full force and effect.

12.2 **Owner** may terminate this Agreement and the other DP Contract Documents without penalty or further obligation pursuant to **Arizona Revised Statutes Section 38-511** if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the **Owner** is or becomes, at any time while the DP Contract Documents or any extension of the DP Contract Documents is in effect, a consultant to the **DP** with respect to the subject matter of the DP Contract Documents or an employee of **DP**.

12.3 If funds are not appropriated by the Legislature of the State of Arizona to pay for the Project or if appropriated funds become unavailable, the **Owner** may delay design and/or construction for a period up to six months, after which date if no appropriated funds are made available by the Legislature, this Agreement and the other DP Contract Documents shall terminate at the option of the **Owner**.

12.4 The **Owner** may, by written notice to the **DP**, terminate this Agreement and the other DP Contract Documents if it is found by the **Owner** that improper gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the **DP** or any agent or representative of the **DP** to any officer or employee of the **Owner** or State of Arizona.

12.5 In the event of termination which is not the fault of the **DP**, the **Owner** shall pay to the **DP** only the compensation properly due for services properly performed and accepted by the **Owner** on the Project prior to the termination date and any reimbursable expenses incurred as provided hereunder. Any post-termination wrap-up costs must be approved by the **Owner** in writing in advance of their accrual or expenditure or **DP** specifically waives all rights to claim such costs.

12.6 This Agreement and the other DP Contract Documents may be terminated by either party for default upon the defaulting party's failure to cure a material breach within seven (7) days after written notice by the non-defaulting party specifying the nature of the default.

12.7 Each payment obligation of the **Owner** created hereby is conditioned upon the availability of funds which are appropriated or allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of the **DP's** services, the DP Contract Documents may be terminated by the **Owner** at the end of the period for which funds are available. The **Owner** shall notify the **DP** at the earliest possible time if the **DP's** services will or may be affected by a shortage of funds. No penalty shall accrue to the **Owner** in the event this provision is exercised, and the **Owner** shall not be obligated or liable for any further payments or for any damages, including lost profit, as a result of termination under this **Section 12.7**.

12.8 As of the termination date, all Drawings, Specifications, and other design, bidding or contract administration documents shall be surrendered forthwith by the **DP** to the **Owner**.

SECTION 13. COMPENSATION FOR THE DESIGN PROFESSIONAL'S SERVICES

13.1 Payment of DP Basic Compensation Services and of any Reimbursable Expenses

13.1.1 Payments for DP Reimbursable Expenses to the extent covered under **Section 6** and DP Basic Compensation shall be made monthly, within thirty (30) days after the **Owner** receives the **DP's** properly itemized statement for Basic Services and any authorized Reimbursable Expenses in such form and accompanied by such supporting documentation as **Owner** may direct. If the **Owner** determines that any amounts requested by the **DP** are not due or are not sufficiently documented, the **Owner** will furnish the **DP** with notice of the reasons for withholding payment along with the **Owner's** payment on account of the balance of the statement.

13.1.2 DP Basic Compensation shall be computed on the following basis: Individual fee proposals are to be submitted and supplemental authorization amendments will be issued per each job scope.

13.1.3 When DP Basic Compensation is based on a stipulated sum, the payments of DP Basic Compensation shall be allocated to each subphase as follows: Individual fee proposals are to be submitted and supplemental authorization amendments will be issued per each job scope.

13.1.4 When any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in **Section 13.1.3** based on (i) the lowest bona fide bid or negotiated proposal, or (ii) if no such bid or proposal is received, the most recent **Owner** approved **DP** Estimate of Probable Construction Costs for such portions of the Project.

13.1.5 Additive and deductive alternates that are not awarded, which involve changes in design (as opposed to substitutions or additions which, in the judgment of the **Owner**, do not involve design changes), will be paid for as a component of DP Basic Compensation during the Construction Phase. Notwithstanding the foregoing, unless otherwise agreed to in writing by the **Owner**, the **DP** shall not be entitled to any additional compensation or reimbursement in connection with the Project for any alternates developed because the GMP proposed by the **CMAR** or, if **Owner** elects to proceed on a design-bid-build method, all responsible and responsive bids exceed the amount within the current **Owner's** Project Budget available for payment of costs of Construction Work.

13.1.6 If and to the extent that the time initially established for the Construction Phase of the Project is exceeded or extended through no fault of the **DP** as determined by the **Owner**, DP Basic Compensation for DP Basic Services required for such extended Construction Phase shall be computed as set forth in **Section 13.2** for DP Additional Services.

13.1.7 **DP** shall pay to each **DP Consultant** within thirty (30) days of receipt of **DP's** monthly payment from **Owner**, that amount properly due and payable to said **DP Consultant** for services performed within the payment period. **DP** shall, by an appropriate agreement with each **DP Consultant**, require each **DP Consultant** to make

payments to its sub-consultants in a similar manner. Upon request of the **Owner**, **DP** shall furnish documentary evidence of compliance with these payment provisions.

13.2 Payment for DP Additional Services

13.2.1 Payments for DP Additional Services shall be made monthly, within thirty (30) days after the **Owner** receives the **DP's** properly itemized statement for DP Additional Services in such form and accompanied by such supporting documentation as **Owner** may direct. If the **Owner** determines that any amounts requested by the **DP** are not due or are not sufficiently documented, the **Owner** will furnish the **DP** with notice of the reasons for withholding payment along with the **Owner's** payment on account of the balance of the statement.

13.2.2 For DP Additional Services in the nature of project representation beyond that specified for DP Basic Services, as approved in writing by the **Owner**, the **DP's** compensation shall be as follows:
Individual fee proposals are to be submitted and supplemental authorization amendments will be issued per each job scope.

13.2.3 For DP Additional Services in retaining consultants, including surveyors, engineers and others whose work does not fall within the DP Basic Services, as approved in writing by the **Owner**, the **Owner** will be charged the actual cost to the **DP** for such services multiplied by a factor of 1.10% (cost plus 10%).

13.2.4 For all other DP Additional Services, the **DP's** compensation will be computed as follows:
Individual fee proposals are to be submitted and supplemental authorization amendments will be issued per each job scope.

SECTION 14. PROJECT SPECIFIC PROVISIONS

In addition to the foregoing for this Project, the **DP** shall: Project specific provisions and Consultant Field Administration and Observation requirements shall be established by Supplemental Authorization.

SECTION 15. MISCELLANEOUS

15.1 No deductions shall be made from the **DP's** compensation on account of liquidated damages or other amounts withheld from payments to the **CMAR**.

15.2 Payments that have not been made to the **DP** within thirty (30) days of the due date shall thereafter bear interest at the contract rate prevailing in the State of Arizona, as established at **Arizona Revised Statutes Section. § 44-1201**, as amended or superseded.

15.3 A listing of the key employees assigned directly to this Project on a day-to-day basis as well as alternates (replacements) has been furnished to and approved by the **Owner** prior to award of the services contract to **DP**. Any substitutions of assigned personnel shall have prior, written approval by the **Owner** and shall be proposed from the list of acceptable alternates. No changes of personnel will be allowed so long as approved personnel remain employees of the **DP** and capable of performing the required services.

15.4 The **DP** shall make a good-faith effort to assure that not less than 15% of the services performed under the DP Contract Documents are performed by a small business as defined in **Arizona Revised Statutes Section 41-1001(19)**. The **DP** shall report to the **Owner** the value of the services performed under this provision during each phase of the project. Documentation evidencing **DP's** compliance with this provision shall be furnished in a format acceptable to **Owner** as a condition precedent to payment for services rendered on subsequent phases of the project or for final payment, as applicable.

15.5 Neither **DP** nor **Owner** may without the written consent of the other, assign, transfer, or sublet any portion or part of the **DP's** services under the DP Contract Documents or the obligations required by either **DP** or **Owner** under the DP Contract Documents.

15.6 The provisions of the DP Contract Documents shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

15.7 Interpretation of the DP Contract Documents and any and all claims, controversies, disagreements and disputes arising under or in connection with the Project, the DP services, the DP Contract Documents shall be governed by the law of the State of Arizona, without giving effect to conflicts of law principles. No suit or action shall be commenced by any claimant other than in the Arizona Superior Court in Maricopa County, Arizona, and only after all contractual and administrative claims, controversies, dispute and disagreement resolution procedures have been fulfilled. By submitting a proposal or its qualifications and also by executing the DP Contract Documents, **DP** agrees to be bound by **Section 3-809(C) of the Arizona Board of Regents Policy** containing procedures claims controversies, disagreements and disputes and waives any objections to those procedures.

15.8 If any provision or any part of a provision of the DP Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the DP Construction Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15.9 The failure of either **DP** or **Owner** to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the DP Contract Documents, shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation.

15.10 The headings used in the DP Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

15.11 Whenever the DP Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered or sent by registered or certified mail, postage prepaid to the address indicated at the end of this Agreement, three (3) days after mailing; or (iii) if transmitted by facsimile, at the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

15.12 If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, the **Owner** may terminate the DP Contract Documents. If such a termination occurs, the **Owner** shall reimburse **DP** for services rendered and non-[cancelable commitments](#) made prior to the termination on the same basis as if Owner had terminated for convenience under **Section 12.1**.

15.13 In connection with the performance of **DP** services under the DP Contract Documents, the **DP** agrees to observe **Arizona Executive Order 99-4** and all applicable Arizona and Federal Laws (including, without limitation, the Americans With Disabilities Act). DP further agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap, except to the extent such discrimination is not prohibited by pertinent State or Federal law or Executive order. In addition, the **DP** agrees to actively recruit in accordance with any affirmative action programs applicable to the **DP**. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. **DP** shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the **Owner**, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

15.14 Any failure of the **Owner** to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of any **DP** claim for relief.

15.15 The **DP** shall comply with the **Owner's** current policy regarding sexual harassment. The **Owner** prohibits sexual harassment by any person on **Owner's** premises or at any **Owner-affiliated** functions.

15.16 The DP Contract Documents represent the complete and integrated agreement between the **Owner** and the **DP** and supersede all prior negotiations, representations or agreements, either written or oral. The DP Contract Documents may be amended only by written instrument signed by both the **Owner** and the **DP**.

15.17 To the extent required by **Section 35-214, Arizona Revised Statutes**, DP agrees to retain all records

relating to the DP Contract Documents. DP agrees to make those records available at all reasonable times for inspection and audit by Owner or the Auditor General of the State of Arizona during the term of the DP Contract Documents and for a period of five (5) years after the completion of the DP Contract Documents. The records shall be provided at Northern Arizona University, Flagstaff, Arizona, or another location designated by Owner upon reasonable notice to DP.

15.18 Each party acknowledges that it has had an opportunity to review the DP Contract Documents with counsel and this document shall not be construed against any party that is determined to have been the drafter of the document.

15.19 None of the DP Contract Documents, the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents shall be construed or interpreted to create any contractual relationship between the **CMAR** or any **Subcontractor**, on the one hand, and the **DP** or any **DP Consultant**, on the other hand.

15.20 Nothing in the DP Contract Documents shall be construed or interpreted to give any third party any claim or right of action against the **Owner**, the **DP** or **CMAR** which does not otherwise exist without regard to the DP Contract Documents.

15.21 Legal Worker Requirements

15.21.1 As required by Arizona Revised Statutes §41-4401 the University is prohibited after September 30, 2008 from awarding a contract to any contractor or consultant who fails, or whose subcontractors or subconsultants fail, to comply with Arizona Revised Statutes § 23-214-A. The **DP** warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subconsultants and sub-subconsultants to provide the same warranties to the **DP**.

15.21.2 The **DP** acknowledges that a breach of this warranty by **DP** or by any subconsultant or sub-subconsultant under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by the University. The University retains the right to inspect the records of any **DP**, subconsultant and sub-subconsultant employee who performs work under this Contract, and to conduct random verification of the employment records of the **DP** and any subconsultant and sub-subconsultant who works on this Contract, to ensure that the **DP** and each subconsultant and sub-subconsultant is complying with the warranties set forth above. The portion of this provision dealing with the **DP's** warranty is not applicable where the **DP** is a governmental entity nor is the **DP** required to pass this provision through to subconsultants and sub-subconsultants who are governmental entities.

15.22 Sudan and Iran. Pursuant to Arizona Revised Statutes § 35-397, **DP** certifies that it does not have a scrutinized business operation in either Sudan or Iran.

15.23 Veterans Preference

15.23.1 **DP** agrees to provide preference in initial employment for U.S. veterans by:

- Adding points to the raw score of a numerically scored screening instrument, or
- Hiring a veteran if, at the conclusion of the search process, a veteran is one of a number of comparably qualified candidates.

15.23.2 For purposes of this certification, "veteran" means: an honorably separated person (honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- During any war declared by Congress;
- During the period April 28, 1952 through July 1, 1955;
- For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- During the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- For more than 180 consecutive days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or

- In a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty. Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

DESIGN PROFESSIONAL:

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

Address for notices to **DP**:

FAX: _____

OWNER:

ARIZONA BOARD OF REGENTS

for and on behalf of

NORTHERN ARIZONA UNIVERSITY

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

Addresses for notices to **Owner**:

Capital Assets and Services
P.O. Box 5637
Flagstaff, AZ 86011

FAX: (928) 523-9441

With a required copy to:

Office of NAU General Counsel

EXHIBIT A

Operating Manual for Construction Manager at Risk Projects

SAMPLE



NORTHERN ARIZONA UNIVERSITY

EXHIBIT A
OPERATING MANUAL
FOR
CONSTRUCTION MANAGER AT RISK PROJECTS
(OPERATING MANUAL FORM)
(NORMAL PROJECTS FORM)

Date (type in) Issued:

NAU PROJECT NO:

NAU PROJECT NAME:

OWNER

ARIZONA BOARD OF REGENTS

for and on behalf of

NORTHERN ARIZONA UNIVERSITY

CMAR

DESIGN PROFESSIONAL

• OPERATING MANUAL FOR MANAGER AT RISK PROJECTS • ©

• DECEMBER, 2003 EDITION •

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NOTE: To assist the Design Professional and the Construction Manager at Risk in identifying provision relating to them and to those who work for them, the following terms are in bold.

- Design Professional, DP and DP Consultant
- Construction Manager at Risk, CMAR, CMAR Representative, Subcontractor and Early Selected Subcontractor
- Owner, Owner Representative

1. GENERAL

1.1 Phases

The Project is divided into two phases.

- The Design Phase is the first phase. During the Design Phase the prime goal of **Owner**, the **Design Professional** and the **Construction Manager at Risk** is to work on and complete a design for the Project that meets the **Owner's** needs and is within the portion of the **Owner's** Project Budget available for payment of costs of the Construction Work. During the Design Phase the CMAR is paid the Design Phase Services Fee, and the CMAR provides services to help achieve this goal. One primary purpose of the **CMAR** services during the Design Phase is to assist the **Owner** and the **DP** in developing an optimum design for the Project. The **CMAR** does not do construction during the Design Phase.
- If during the Design Phase (i) the **CMAR** and the **Owner** agree on a Guaranteed Maximum Price and related matters, (ii) **CMAR** and **Owner** execute and deliver the CMAR Construction Contract with all the attachments and exhibits thereto, (iii) **CMAR** delivers the Payment Bond and the Performance Bond in the forms attached to the General Conditions, (iv) **Owner** approves the Construction Documents, and (v) **Owner** issues a written directive for **CMAR** to proceed with the Construction Work, then and only then will there be a second phase (the Construction Phase). Until all of the actions in (i), (ii), (iii), (iv) and (v) occur there is no Construction Phase, the **Owner** is not obligated to have the **CMAR** construct the Project, the **CMAR** has no right to construct the Project, and the **CMAR** has no claim against the **Owner** if the **Owner** elects to terminate the Project, to not construct the Project, or to not have **CMAR** construct the Project.
- The Construction Phase is the second phase. During the Construction Phase the prime goal of the **Owner**, the **CMAR** and the **Design Professional** is successful construction of the Project in accordance with the Construction Documents. During the Construction Phase, the **CMAR** constructs the Project.
- The Design Phase and the Construction Phase are not mutually exclusive in timing. The Construction Phase may begin before all activities in the Design Phase are completed. Regardless of when the Construction Phase begins, **DP** and **CMAR** will remain obligated to complete all actions included in the Design Phase under the DP Contract Documents and the CMAR Design Phase Services Contract Documents. The Design Phase will be considered only after (i) approval by **Owner** of the Construction Documents for the entire Construction Work, (ii) performance by **CMAR** of all obligations to be performed by **CMAR** during the Design Phase, (iii) all **Subcontractor** bids have been accepted by the **CMAR** for the entire Construction Work and **CMAR** has entered into contracts with **Subcontractors** covering the entire Construction Work or alternatively, if **Owner** elects to construct the Project using the design-bid-build project delivery method, the **Owner** has entered into a construction contract for the entire Construction Work, and (iv) performance by the **DP** of all obligations to be performed by **DP** during the Design Phase.
- The **Owner** and the **CMAR** will use separate accounts in their respective financial records for the Design Phase and the Construction Phase. One account will cover the CMAR Design Phase Services Contract and the other will cover the CMAR Construction Contract.

1.2 Relationships and Roles

Attachment 1 is a diagram showing the relationships of **Owner**, **Design Professional** and **Construction Manager at Risk**.

Owner has or will hire a **Design Professional** to design the Project, provide Estimates of Probable Construction Costs and perform the other services as provided in the DP Contract Documents during the Design Phase. During the Construction Phase, the **DP** will provide certain administrative services and other services as provided in the DP Contract Documents.

Owner has or will hire a **Construction Manager at Risk** to advise the **Design Professional** and the **Owner** on the design of the Project, to provide cost estimates and to provide other services under the CMAR Design Phase Services Contract Documents during the Design Phase. If the CMAR Construction Contract is executed by **Owner** and CMAR, then and only then will the CMAR perform the Construction Work during the Construction Phase. **CMAR** commits to cooperate with and assist the **Design Professional** during the Design Phase in producing a completed design for the Project that is acceptable to the **Owner**.

1.3 Common Goal, Team Concept and Cooperation and Coordination

Owner, **CMAR** and **DP** commit, at all times, to cooperate and coordinate fully with each other and with others involved in the Project, to proceed on the basis of trust, confidence, and good faith and to use their best skill and effort in their activities on the Project.

Owner, **CMAR** and **DP** have a **common goal** because the goal benefits each of them. **The goal is completion of a quality Project meeting the Owner's needs, within the Owner's budget, within the Owner's time schedule, at a reasonable and appropriate cost to Owner and with a reasonable and appropriate fee for each of DP and CMAR.** The **Subcontractors** and **DP Consultants** will have this common goal also. **Owner**, **CMAR**, **Subcontractors**, **DP**, and **DP Consultants** are to think of themselves collectively as a **team** and individually as a **team member**. The purpose of the team is to achieve the above goal. In working toward the goal, each team member looks out for its own interest, for the interest of the team and for the interest of the other team members.

The primary methods used in a construction manager at risk CMAR project to achieve the goal described above are cooperation and coordination. For example:

- The **CMAR** and the **DP** bring different skills to the Project. During the Design Phase, they use those skills cooperatively and they coordinate their activities to achieve a quality design that maximizes the **Owner** user group's approved project elements included in the Project within the portion of the Project Budget available for costs of Construction Work.
- The **CMAR**, **DP** and **Owner** try to anticipate problems during both the Design Phase and the Construction Phase and act quickly and cooperatively and in coordination to avoid potential problems. For problems that actually arise, they identify them as early as possible and act on them quickly. Regardless of its nature, each potential or actual problem is a "team" or "project" problem that the **CMAR**, the **DP** and the **Owner** try to solve together cooperatively and in coordination.
- **Owner**, **DP** and **CMAR** are fully committed to working cooperatively and to coordinate with each other in good faith throughout the Project. They agree to communicate with each frequently so as to assure sharing of knowledge, cooperation, coordination and avoidance or minimalization of problems, disagreements, disputes and claims.
- Each of the **CMAR**, the **DP** and the **Owner** will use its good faith efforts to advise the others as promptly as possible upon learning of any problems, potential problems, discrepancies, conflicts or ambiguities that it determines exist in the Design Submission Documents, the Estimates of Probable Construction Costs, the Construction Costs Estimates or that otherwise exist during the Design Phase or during the Construction Phase.

The goal is to work as a team and to cooperate and to coordinate. However, this team approach, cooperation and coordination will not affect or impair the respective rights and responsibilities of **Owner**, **DP** and **CMAR** under the DP Contract Documents, the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents.

1.4 Operating Manual

This Operating Manual is a legally binding contract document and is one of the **DP** Contract Documents. The **Design Professional** agrees to perform its obligations and to comply with the terms and conditions applicable to the **DP** under this Operating Manual and the other DP Contract Documents.

This Operating Manual is a legally binding contract document and is one of the **CMAR** Design Phase Services Contract Documents. The **CMAR** agrees to perform its obligations and to comply with the terms and conditions applicable to the **CMAR** during the Design Phase under this Operating Manual and the other CMAR Design Phase Services Contract Documents.

If and when a Guaranteed Maximum Price and related matters are agreed by **Owner** and **CMAR** and if the Construction Contract Between **Owner** and **CMAR** is executed and delivered by **Owner** and **CMAR**, then this Operating Manual is one of the **CMAR** Construction Contract Documents and the **CMAR** agrees to perform its obligations and to comply with the terms and conditions applicable to the **CMAR** during the Construction Phase under this Operating Manual and the other CMAR Construction Contract Documents.

Owner agrees to perform its obligations and to comply with the terms and conditions applicable to Owner under this Operating Manual and the other DP Contract Documents, the other CMAR Design Phase Services Contract Documents and, after the CMAR Construction Contract is executed, the other CMAR Construction Contract Documents.

1.5 Section and Exhibit References Unless otherwise noted any and all references in this Operating Manual, any DP Contract Document, any CMAR Design Phase Services Contract Document or any CMAR Construction Contract Document to sections and to exhibits are references in the respective document. Each exhibit to this Operating Manual, each DP Contract Document, each CMAR Design Phase Services Contract Document or each CMAR Construction Contract Document is hereby incorporated herein or therein, respectively, in full.

1.6 Definitions

The following terms shall have their respective designated meanings when used in this Operating Manual, in the other DP Contract Documents, in the other CMAR Design Phase Contract Documents, and in the other CMAR Construction Contract Documents. Terms defined in the other DP Contract Documents, in the other CMAR Design Phase Services Contract Documents, and in the other CMAR Construction Contract Documents will have their respective designated meanings when used in this Operating Manual and in the other DP Contract Documents, the other CMAR Design Phase Services Contract Documents and the other CMAR Construction Contract Documents.

The definitions are organized into the following categories, but this will not affect or impair their use or meaning in documents:

- **Definitions relating to the Project**
- **Definitions relating to the Parties, Other Project Participants and the Contract Documents**
- **Definitions relating primarily to the Design Phase**
- **Definitions relating to the Design Phase and the Construction Phase**
- **Definitions relating primarily to the Construction Phase.**

DEFINITIONS RELATING TO THE PROJECT

“**Project**” is **Owner**’s project identified on the title page of this Operating Manual.

“**Project Budget**” means the **Owner**’s total budgeted cost to the **Owner** for the Project, including all sums to be paid to or for the **DP**, the **CMAR**, other **Owner** consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, and other incidentals required to achieve final completion of the Project.

“**Project Criteria**” means the items developed by, with or for **Owner** to describe **Owner**’s program, requirements and objectives for the Project, including, among others, use, space, price, time, site, utility, parking, and expandability requirements. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by, with or for **Owner**.

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

“**DP Site Information**” has the meaning specified in **Section 2.2.2**.

“**CMAR Site Information**” has the meaning specified in **Section 2.5.3**.

DEFINITIONS OF PARTIES, OTHER PROJECT PARTICIPANTS AND CONTRACT DOCUMENTS

“**DP**” or “**Design Professional**” means (i) the **Design Professional** engaged by **Owner** for the Project, and (ii) its officers, employees, agents, independent contractors and authorized representatives involved in any way in the Project.

[NOTE TO USERS OF THIS DOCUMENT. When preparing a contract, please fill in the Month, Date and Year in the second line below.]

“**CMAR**” or “**Construction Manager at Risk**” means (i) the construction manager at risk engaged by **Owner** for the Project and (ii) its officers, employees, agents, independent contractors and authorized representatives involved in any way in the Project. **CMAR** also includes all persons and entities identified as members of the **CMAR** Project Team in the **CMAR**’s response to the **Owner**’s RFQ dated (Month Day, Year), with amendments, and any substitutes permitted under the terms of the RFQ and this Operating Manual. In addition, for purposes of the DP Contract Documents only, if **Owner** terminates its contract with the original or any replacement **CMAR** and elects to proceed with the construction-manager-at-risk method for the Project, then “**CMAR**” means any replacement **CMAR** engaged by **Owner** for the Project or, if the **Owner** terminates its contract with any **CMAR** and elects to proceed using the design-bid-build method for the Project, “**CMAR**” means the design-bid-build contractor selected by **Owner**.

“**Subcontractor**” means (i) any consultant retained by **CMAR** during the Design Phase or the Construction Phase, (iii) any **Early Selected Subcontractor** (defined in **Section 2.1.2**) that participates in the Design Phase, (iii) any person or entity at any tier of relationship to **CMAR** who performs any part of the Construction Work, on or off Site, directly or indirectly on behalf of the **CMAR**, (iv) any person or entity at any tier of relationship to **CMAR** who provides any equipment, material, services or any other item in respect of the Construction Work, on or off site, directly or indirectly on behalf of **CMAR**, and (v) all officers, employees, agents, independent contractors and authorized representatives of the foregoing. This includes, among others, workers, laborers, material suppliers, and other persons or entities providing labor, materials and equipment relating to Construction Work.

“**DP Consultant**” means (i) a consultant engaged by the **DP** to assist the **DP** in connection with **DP**’s activities under the DP Contract Documents as to which consultant the **DP** has complied with the requirements for engaging a **DP** consultant in the DP Contract Documents, and (ii) the consultant’s officers, employees, agents, independent contractors and authorized representatives involved in any way in the Project.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in below the date of the DP Agreement]

“DP Contract Documents” means, in the following order of precedence, the Agreement Between Owner and Design Professional (Construction Manager at Risk Form), dated _____ (**“DP Agreement”**), this Operating Manual, Owner’s Project Criteria, Owner’s Design Guidelines, the Design Submission Documents, the Construction Documents, **DP’s** Estimates of Probable Construction Costs, any written modifications of the foregoing executed by **Owner** and **DP**, **Owner’s** Request for Qualifications for Design Professional for the Project (**“DP RFQ”**) and all addenda thereto, the **DP’s** proposal or submission of qualifications as required by the DP RFQ, the **Owner’s** notice of award, the respective exhibits and attachments to each of the foregoing. Each and all of the foregoing are incorporated herein by reference along with their respective exhibits and attachments.

“CMAR Design Phase Services Contract Documents” means the following and their respective exhibits and attachments. They are listed in order of precedence. They are incorporated herein by reference along with their respective exhibits and attachments.

- The Construction Manager at Risk Design Phase Services Agreement (Operating Manual Form)(**“CMAR Design Phase Services Contract”**).
- The General Conditions (Construction Manager at Risk)(Operating Manual Form) attached to the CMAR Design Phase Services Contract as **Exhibit A** thereto (**“General Conditions”**).
- This Operating Manual for Construction Manager at Risk Projects attached to the CMAR Design Phase Services Contract as **Exhibit B** thereto (**“Operating Manual”**).
- Owner’s General Project Requirements attached to the CMAR Design Phase Services Contract as **Exhibit C** thereto (**“Owner’s General Project Requirements”**).
- Owner’s Design Guidelines
- Upon execution by **Owner** and **CMAR** any written modifications of the **CMAR** Design Phase Services Contract Documents.
- **Owner’s** Project Criteria and any architectural program developed by **Owner** and **Design Professional**.
- The Design Submission Documents from and after their approval by **Owner**.
- **Owner’s** Request for Qualifications for Construction Manager at Risk (**“CMAR RFQ”**) with all addenda and exhibits thereto, the **CMAR’s** proposal or submission of qualifications as required by the RFQ and **Owner’s** notice of award.
- The following other documents, if any, are included in the CMAR Design Phase Contract Documents:

[NOTE TO USERS OF THIS DOCUMENT: List all other documents that the Owner wants to be part of the CMAR Design Phase Contract Documents and that are to be binding on the CMAR and the Owner, regardless of whether the documents are listed or described anywhere else in the contract documents. If there are no additional documents, insert “None”.]

“CMAR Construction Contract” means the Construction Contract Between **Owner** and **Construction Manager at Risk** in the form of **Attachment 2** hereto with all blanks completed, and with all exhibits thereto and executed by **Owner** and **CMAR** and including any subsequent written modifications thereto executed by **Owner** and **CMAR**.

“CMAR Construction Contract Documents” means the following and their respective exhibits and attachments. They are listed in order of precedence. They are incorporated herein by reference along with their respective exhibits and attachments.

- The **CMAR** Construction Contract.
- The General Conditions attached to the CMAR Construction Contract as **Exhibit A** thereto.
- This Operating Manual attached to the CMAR Construction Contract as **Exhibit B** thereto (**“Operating Manual”**).
- Owner’s General Project Requirements attached to the CMAR Construction Contract as **Exhibit C** thereto.
- GMP Schedule attached to the CMAR Construction Contract as **Exhibit D** thereto.
- Schedule of Values attached to the CMAR Construction Contract as **Exhibit E** thereto.
- GMP Setting Drawings, Specifications, Assumptions and Clarifications attached to the CMAR Construction Contract as **Exhibit F** thereto.
- Upon execution by **Owner** and **CMAR**, Change Orders and other written modifications of the CMAR Construction Contract Documents.
- **Owner’s** Project Criteria developed by **Owner** and **Design Professional** and any architectural program developed by **Owner** and **Design Professional**.
- The Construction Documents and the other Design Submission Documents from and after their approval by **Owner**. As the Design Submission Documents are completed and accepted by the **Owner**, they shall become part of the CMAR Construction Contract Documents as though they were specifically set forth herein at the time of execution of the CMAR Construction Contract.
- The CMAR RFQ with all addenda and exhibits thereto, the **CMAR’s** proposal or submission of qualifications as required by the RFQ and **Owner’s** notice of award.
- Performance Bond and Payment Bond.
- Project Manual (defined in **Section 2.10.4**), as and when issued by the **DP**, used by the **CMAR** in preparing the proposed Guaranteed Maximum Price and included in the bid packages for **Subcontractors**.
- Supplementary General Conditions (defined in **Section 2.10.4**), as and when issued by the **DP**, used by the **CMAR** in preparing the proposed Guaranteed Maximum Price and included in the bid packages for **Subcontractors**.
- The following other documents, if any, are included in the CMAR Construction Contract Documents: (List, for example, Unit Price Schedules, **CMAR’s** Allowances, **Owner’s** Permit List, if any, and other CMAR Construction Contract Documents).

[NOTE TO USERS OF THIS DOCUMENT: List all other documents that the Owner wants to be part of the CMAR Construction Contract Documents and that are to be binding on the CMAR and the Owner, regardless of whether the documents are listed or described in another part of the CMAR Construction Contract, the General Conditions or the Operating Manual. If there are no additional documents, insert “None”.]

DEFINITIONS RELATING PRIMARILY TO THE DESIGN PHASE

“Design Phase” is the time period when (i) the **DP** prepares the Design Submission Documents, provides Estimates of Probable Construction Costs, and performs the other activities of the **DP** in **Section 2** of this Operating Manual, (ii) the **CMAR** advises the **Owner** and the **Design Professional** concerning the design of the Project, provides Construction Costs Estimates and performs the other activities of the **CMAR** in **Section 2** of this Operating Manual.

“CMAR Design Phase Services” means the activities to be performed by the **CMAR** under the CMAR Design Phase Services Contract Documents.

“CMAR Design Phase Services Fee” will have the meaning specified in Section 5.1 of the CMAR Design Phase Services Contract.

“Design Submission Documents” consist of the drawings and specifications prepared at specific subphases of the Design Phase by the **Design Professional** (including, among others, the Program Development documents, the Schematic Design documents, the Design Development documents, and the Construction Documents), Estimates of Probable Construction Cost prepared by the **Design Professional**, and any other documents prepared by the Design Professional during the Design Phase.

“Estimate of Probable Construction Costs” is an estimate of costs of the Construction Work that is prepared by the **DP** during the Design Phase that uses an elemental systems method of allocating costs of the Construction Work, that contains the level of detail specified by **Owner** and that otherwise is in a form agreed by **DP**, **CMAR** and **Owner**.

“Estimate of Construction Costs” is an estimate of the costs of the Construction Work that is prepared by the **CMAR** during the Design Phase, that uses an elemental systems method of allocating costs of the Construction Work, that contains the level of detail specified by **Owner** and that is otherwise in a form agreed by **DP**, **CMAR** and **Owner**.

DEFINITIONS RELATING TO THE DESIGN PHASE AND THE CONSTRUCTION PHASE

“Contingency” will have the meaning specified in **Section 2.10.4**.

“GMP Setting Drawings, Specifications, Assumptions and Clarifications” will have the meaning specified in **Section 2.10.5**.

“Guaranteed Maximum Price” or **“GMP”** is the amount that the **CMAR** guarantees (the sum of the cost of the Construction Work, the Contingency, the **CMAR’s** Construction Phase Fee, all other items as set forth in the GMP Schedule and all other activities included in the Construction Work) to be the maximum amount due the **CMAR** for performance of all of the Construction Work, as the GMP may be modified from time to time by Change Orders and as otherwise modified from time to time as provided in the CMAR Construction Contract Documents. The **CMAR** guaranties that the Actual Cost of Construction Work to be paid by the **Owner** will not exceed the GMP. If the Actual Cost of the Construction Work exceeds the GMP, the **CMAR** will pay the difference, that is, all costs for performing the Construction Work, which exceed the GMP are to be paid by the **CMAR** and not the **Owner**. The procedure for setting the GMP is in **Section 2.10**.

“GMP Schedule” means the schedule showing the breakdown of the GMP and attached to the CMAR Construction Contract, as it may be modified as provided in the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents. This schedule will be in an elemental systems format and otherwise in a form mutually agreed by **CMAR** and **Owner** having the level of detail specified by **Owner**.

“Legal Requirements” include all regulations, policies and practices of the Arizona Board of Regents and all applicable rules, laws, codes, ordinances and regulations of any governmental or quasi-governmental entity, federal, state and local having jurisdiction over the **DP**, any **DP Consultant**, activities under the DP Contract Documents, the **CMAR**, any **Subcontractor**, the CMAR Design Phase Services, or the Construction Work, the practices involved thereunder, or any other action performed by **DP**, any **DP Consultant**, **CMAR** or any **Subcontractor**. Legal Requirements does not include sales, use, consumer, income and other taxes.

“Work Package” is a segment of the Construction Work. This term is operative in the DP Contract Documents, the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents only if the **Owner** has determined to divide the Construction Work into Work Packages as provided in **Section 2.13**. The number of Work Packages, the contents of each Work Package and other matters relating to Work Packages are determined in accordance the provision under the heading “Work Packages” in **Section 2.13**.

DEFINITIONS RELATING PRIMARILY TO THE CONSTRUCTION PHASE

“CMAR Construction Phase Fee” will have the meaning specified in Section 2.8 of the CMAR Construction Contract.

“Construction Documents” will have the meaning specified in **Section 3.2.5**.

“Construction Phase” is the time period when the **CMAR** performs the Construction Work. This phase begins if and only if the **Owner** and the **CMAR** agree on the Guaranteed Maximum Price and related matters, if **Owner** and **CMAR** execute and deliver the CMAR Construction Contract, if **Owner** approves the Construction Documents, and if **Owner** issues a written directive for **CMAR** to proceed with the Construction Work. The Construction Phase and the Design Phase may overlap.

“Construction Work” means the activities to be performed by the **CMAR** under the CMAR Construction Contract Documents, including, without limitation, procuring and furnishing all materials, equipment, tools, services, and labor reasonably inferable from the Construction Documents and the other CMAR Construction Contract Documents or from prevailing trade usage and custom to complete all work described in or reasonably inferable from the Construction Documents and the other CMAR Construction Contract Documents. This includes all work during the actual construction period, the commissioning period and the warranty period. The Construction Work includes, among other items, construction of the Project in accordance with the Construction Documents and the other CMAR Construction Contract Documents.

“Actual Costs of Construction Work” is the aggregate amount of actual costs for the Construction Work in those categories of costs set forth in the GMP Schedule chargeable to the **Owner** under the provisions of the CMAR Construction Contract Documents, provided that:

- the Actual Costs of the Construction Work to be paid by **Owner** to the **CMAR** shall not exceed the Guaranteed Maximum Price set forth in the CMAR Construction Contract Documents, as such GMP may be modified in accordance with the CMAR Construction Contract Documents;
- the Actual Costs of the Construction Work to be paid by **Owner** shall not exceed the Open Book Cost; and
- the Actual Costs of Construction Work to be paid by **Owner** for Construction Work covered by each line item in the GMP Schedule shall not exceed the amount in that line item in the GMP Schedule, as the GMP Schedule may be modified as provided in the CMAR Construction Contract Documents.

“Open Book Cost” is the Actual Cost of the Construction Work as compiled, recorded and substantiated by **CMAR** based on the financial and other records collected and maintained in accordance with **Section 3.19.3**

“Savings” is the positive amount difference, if any, of the Guaranteed Maximum Price less the Actual Cost of Construction Work and shall be allocated as set forth in **Section 3.5.2**. Savings is determined by the **Owner** with such assistance of the **CMAR** as **Owner** requests. Savings is based on the GMP as in effect on the date of Final Completion of the entire Construction Work.

“Day” and **“Days”** mean calendar days, unless specifically provided otherwise. If a specific day or a period is provided for an action and the specific day or the last day of the period falls on a Saturday, a Sunday or a Federal, State of Arizona, or **Owner** holiday or other day on which **Owner** is not open for business, the day

shall be the next following day that is not a Saturday, Sunday or Federal, State of Arizona, or **Owner** holiday or other day on which **Owner** is not open for business.

“**Punch List**” are those minor items of the Construction Work identified and listed by **Design Professional** and agreed to by **Owner** to be completed by the **CMAR** after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.

“**Schedule of Values**” means the schedule of values attached to the CMAR Construction Contract, as such schedule may be modified from time to time as provided in the CMAR Construction Contract Documents.

“**Substantial Completion**” means the Construction Work, or an agreed portion of the Construction Work that **Owner** has agreed to accept separately, is sufficiently complete, as determined by the **Design Professional's** issuance of a Certificate of Substantial Completion, so that **Owner** can fully occupy and utilize the Project, or the agreed upon portion thereof, for the purposes for which it is intended. Upon Substantial Completion, all Construction Work must be complete except for Punch List items.

“**Final Completion**” means 100% completion of all Construction Work noted in or reasonably inferred from the Construction Documents and the other CMAR Construction Contract Documents, including but not limited to, all Punch List work, all record and close-out documents specified in **Owner's** Project specifications and **Owner** training/start up activities.

“**Change Order**” has the meaning specified in **Section 3.33.1**.

“**Change Directive**” has the meaning specified in **Section 3.34.1**.

1.7 Meetings

The **CMAR**, **Design Professional** and **Owner** shall attend all regular meetings and such additional meetings as are called as provided below.

During the Design Phase all regular meetings will be scheduled by the **DP** with the agreement of the **CMAR** and approval of the **Owner**. All additional meetings will be scheduled by the **Owner**.

During the Design Phase, the **DP** will take minutes at each meeting and distribute draft minutes within three (3) business days after each regular meeting and each additional meeting. The **CMAR** and **Owner** will promptly review the minutes of each meeting and deliver any comments to the **DP**. The **DP** will promptly issue final minutes of each meeting, which shall be approved by **DP**, **CMAR** and **Owner**.

During the Construction Phase there will be weekly progress meetings of the **DP**, **CMAR** and **Owner**. The **CMAR** shall schedule and conduct the weekly progress meetings during the Construction Phase. The weekly progress meetings will be used to discuss jointly such matters as procedures, progress, scheduling, submittals, requests for information (RFI), any work deficiencies, any other actual problems or potential problems, fixes to and limits on actual problems and ways to avoid, limit or fix potential problems. **Owner**, **DP** and **CMAR** will contribute their good faith efforts in such discussions to find ways (i) to complete the Project within the Contract Time(s) in accordance with the Construction Documents and the other CMAR Construction Contract Documents and within the Guaranteed Maximum Price, (ii) to limit and fix actual problems, and (iii) to anticipate and then avoid, limit or fix potential problems. None of such discussions shall affect or impair the respective rights, responsibilities and obligations of **DP**, **Owner** and **CMAR** under the DP Contract Documents and the CMAR Construction Contract Documents.

During the Construction Phase, special on-site meetings shall be held as requested by the **Owner**, **DP** or **CMAR**.

During the Construction Phase, the **CMAR** will take minutes at each meeting and distribute draft minutes within three (3) business days after each regular meeting and each additional meeting. The **DP** and **Owner** will

promptly review the minutes of each meeting and deliver any comments to the **CMAR**. The **CMAR** will promptly issue final minutes of each meeting, which shall be approved by **CMAR**, **DP** and **Owner**.

1.8 Compliance with Legal Requirements.

The **DP**, **DP Consultants**, **CMAR**, **Subcontractors** and **Owner** will each comply with all applicable Legal Requirements.

2. DESIGN PHASE

2.1 Design Phase Cooperation and Coordination

The **Owner**, the **DP** and the **CMAR** will have an initial meeting promptly after selection of the **DP** and the **CMAR** to discuss issues affecting Project administration and to implement procedures to permit the **Owner**, the **DP**, and the **CMAR** to perform their obligations under the **CMAR** Design Phase Services Contract Documents and the **DP** Contract Documents. Among other matters to be covered at this meeting will be procedures for efficient interaction among them during the Design Phase so that each can perform its activities, functions and obligations in an efficient, cooperative and coordinated manner. Among other subjects to be covered by the procedures will be:

- Arrangements for collaboration between the **DP** and the **CMAR** in preparing Design Submission Documents, the **DP's** Estimates of Probable Construction Costs and the **CMAR's** Construction Costs Estimates as required for the Program Development, Schematic Design, and Design Development subphases and in submitting each set of Design Submission Documents and the related cost estimates to the **Owner** for review and for comments by the **Owner** and for group discussions among the **DP**, **CMAR** and **Owner**.
- Arrangements that encourage frequent informal interaction and communication among the **DP**, the **Owner** and the **CMAR** during the Design Phase, especially between submissions of Design Submission Documents, Estimates of Probable Construction Costs and Construction Costs Estimates, including among other activities, the **CMAR** offering to the **DP** and **Owner** recommendations on the design of the Project and the **DP** using that information in its design work on the Project.
- A schedule for the activities of the **CMAR**, the **Owner** and the **DP** during the Design Phase.
- The procedures for pre-qualification of **Subcontractors** and for preparation of **Subcontractor** bid packages under **Section 2.11**.
- The procedures for any early selection of **Subcontractors** under **Section 2.12**.
- If the **Owner** elects a formal "partnering" process for the Project, another subject to be covered in the initial meeting will be development of partnering procedures for the Design Phase. Partnering is a mutual effort by all the parties involved in a Project to cooperate and coordinate efforts in order to achieve the final result. Partnering requires that all parties use their particular expertise for the mutual benefit of all, rather than for the benefit of the one. Partnering requires flexibility, the ability to appreciate the positions of the other parties and to make compromises for the benefit of all. Partnering will be implemented by the utilization of a formal partnering process developed as described above and presented in a separate workshop attended by the **CMAR**, the **Owner**, the **Design Professional** and their key participants. Follow up sessions will occur every three (3) months or as mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this partnering effort during Design Phase will be shared equally by the **Owner**, the **CMAR**, and the **DP**.

No actions of cooperation, coordination, or attempted cooperation, attempted coordination or failure to cooperate or coordinate on any matter shall affect or impair the respective rights and responsibilities of **Owner**, **DP** and **CMAR** under the DP Contract Documents and the CMAR Design Phase Services Contract Documents.

2.2 Design Phase General

2.2.1 The **DP** shall evaluate the **Owner's** preliminary Project Budget in general and the portion of the Owner's Project Budget available for payment of costs of the Construction Work in particular, with the assistance of the **CMAR**. The **Owner** shall advise the **DP** and the **CMAR** in writing of the amount within the **Owner's** Project Budget available for the costs of the Construction Work. The **DP's** Estimates of Probable Construction Costs and the **CMAR's** Estimates of Construction Costs shall not exceed this amount. The amount within the **Owner's** Project Budget available for costs of the Construction Work may be revised only by a writing executed by **Owner**.

2.2.2 Unless otherwise agreed by the **Owner** and the **DP**, the **Owner** shall retain surveyors, engineers, or other consultants in connection with the following items, provided such information is specifically requested by the **DP** or the **Owner**.

(i) A survey of existing site conditions. A complete and accurate survey of the building site and existing improvements including but not limited to the grades and lines of streets, pavements, and adjoining properties, contours of the building site, and full information as to sewer, water, gas, electrical service, telephone lines, or other utilities.

(ii) A report on subsurface investigations. Professional recommendations regarding local conditions accompanied by test borings, or test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion, and resistivity tests including necessary operations for determining subsoil, air and water conditions, and chemical, mechanical, laboratory or other tests.

(iii) As-built information in possession of Owner concerning any existing improvements that will remain on the Site and that will be incorporated in the Project, to which the Project will be attached or with which the Project will be interconnected.

(iv) All other tests recommended by **DP** and mutually agreed to by **Owner** and **DP**.

In addition to the above information, the **DP** shall be responsible for obtaining information concerning conditions of the Site typically obtained within the design professional industry to assess conditions for similar projects.

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

The **DP** shall thoroughly acquaint itself with all DP Site Information.

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

The DP shall have the right to rely upon surveys, soil test reports, other test reports and other information obtained by the Owner. However, the DP shall carefully examine all surveys, soil test reports, other test reports and other information whether obtained by the DP or the Owner. The DP shall promptly report to the Owner any errors, omissions or inadequacies or reasonably suspected errors, omissions or inadequacies in such surveys, soil test reports, other test reports and other information of which the DP becomes aware as a result of such examination or otherwise and of any disagreement the DP may have with the conclusions of such surveys, soil test reports, other test reports and other information. If the DP submits the next due Design Submission Documents, the DP shall be deemed to have waived any claim or defense it may have as the result of the alleged error, inadequacy or ambiguity. The DP and the DP Consultants shall make themselves available to the soils engineer and any other person retained by Owner to prepare any surveys, soils test reports, other test reports or other information.

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

2.3 Development of Design Submission Documents and Certain Matters Concerning DP's Estimates of Probable Construction Costs and CMAR's Estimates of Construction Costs

NOTE: Please see **Section 2.7** for additional provisions on DP's Probable Construction Costs and CMAR's Estimates of Construction Costs.

2.3.2 Program Development Subphase

(i) The **DP** shall review the **Owner's** Project Criteria to ascertain the basic requirements for the Project, including but not limited to the following criteria: (a) identified units of facility need; (b) projected enrollment or activity; (c) references to relevant standards appropriate to comparable institutions; (d) discussion of locational determinants; (e) projected utilization for any classrooms or teaching laboratories; (f) estimated net-to-gross ratios; and (g) specified special physical requirements affecting cost.

(ii) After reviewing the Project Criteria the **DP** shall meet with the **Owner** and identified facilities users to gain an in depth understanding of Project needs and provide initial feedback to all attendees.

(iii) The **DP** shall prepare an Architectural Program for review by the **Owner** and the **CMAR** and for the **Owner's** approval, which expands and defines the Project Criteria. Such program shall include all site conditions affecting the Project.

(iv) The Architectural Program shall consist of a detailed written report on the following subject matter:

- (1) Required size, use, occupancy, finishes, and furnishings/ equipment requirements for all spaces;
- (2) Required relationships of spaces to other spaces;
- (3) Required utility services and other infrastructure needs for all spaces and investigations into available utilities;
- (4) Environmental requirements for all spaces;
- (5) Traffic/circulation requirements within and without the building and building service requirements;
- (6) Tabulation of all net assignable areas;

- (7) Explanation of probable required non-assignable spaces;
 - (8) Calculation of probable gross building area(s);
 - (9) Code analysis;
 - (10) Site analysis, including utilities, circulation, service, orientation, adjacent structures, etc.; and
 - (11) An Estimate of Probable Construction Costs based on the foregoing.
- (v) The **DP** shall work in a collaborative, cooperative and coordinated manner with the **CMAR** in developing items defined in **Item (iv)** above. If agreement by the **DP** and the **CMAR** is not attainable, the **Owner** representative will make the final determination on the matter.
- (vi) The **CMAR** shall develop and submit to **Owner** and **DP** an Estimate of Construction Costs.

2.3.3 Schematic Design Subphase

- (i) The **DP** shall review the Architectural Program with the **Owner** and the **CMAR**, solicit and receive comments and recommendations from the **CMAR** and the **Owner**, confirm the **Owner's** and the **CMAR's** understanding of the subject matter, determine any additional, modified or alternative requirements, and obtain the **Owner's** approval.
- (ii) The **DP** shall provide the **Owner** with a preliminary evaluation of the requirements of the Project in light of the amount within the Project Budget available for costs of the Construction Work.
- (iii) The **DP** shall review with the **Owner** and the **CMAR** alternate methods and approaches to the design and construction of the Project and recommend an approach and jointly decide with the **Owner** and the **CMAR** the method best suited to the **Owner's** requirements and the Project.
- (iv) Based upon the Architectural Program, the discussions with the **Owner** and the **CMAR**, the amount within the **Owner's** Project Budget available for costs of the Construction Work, the DP Site Information, the **DP** shall prepare Schematic Design Documents (SDDs), which will consist of drawings and other documents depicting the scale and relationship of Project components, for review with the **Owner** and the **CMAR** and for the **Owner's** approval.
- (v) The Schematic Design Documents (SDDs) shall consist of at least the following:
 - (1) Preliminary architectural site plan,
 - (2) Survey of site conditions pursuant to **Section 2.2.2**,
 - (3) Report on subsurface investigations pursuant to **Section 2.2.2**,
 - (4) Structural plan(s) showing proposed bay arrangements, materials:
 - (a) Typical interior framing details, showing intended materials,
 - (b) Typical exterior framing details,
 - (c) Typical column/foundation schedule,
 - (d) Vibration isolation review, and
 - (e) Section(s).
 - (5) Schematic floor plans:
 - (a) New work, all floor levels,
 - (b) Remodeled areas of existing structures, if any, including demolition, and
 - (c) Existing building drawings for remodeled areas.
 - (6) Exterior elevations,
 - (7) Diagrammatic building sections,
 - (8) Typical wall sections to show materials, relationships, and construction intent,
 - (9) Typical key architectural details,
 - (10) Room material and equipment outline,
 - (11) Schematic narrative of design rationale, proposed construction, code analysis, structural systems,
 - (12) Preliminary mechanical equipment room layouts (major equipment only),
 - (13) Preliminary one-line HVAC duct layouts and/or preliminary mechanical piping diagram,
 - (14) Preliminary one-line electrical distribution diagrams,
 - (15) Preliminary draft of Project Manual including outline specifications,
 - (16) Narrative descriptions of proposed alternative mechanical, electrical and special systems,

- (17) Estimate of Probable Construction Costs based on the foregoing, with area breakdowns (net and gross) and analysis, and
 - (18) Communications and data transmission system infrastructure.
- (vi) The **DP** shall work in a collaborative, cooperative and coordinated manner with the **CMAR** in developing items defined in **Item (v)** above. If agreement by the DP and the CMAR is not attainable, the **Owner** representative will make the final determination on the matter.

(vii) The **CMAR** shall develop and submit to **Owner** and **DP** an Estimate of Construction Costs.

(viii) The **DP** and **CMAR** shall reconcile the **DP's** Estimate of Probable Construction Costs with the **CMAR's** Estimate of Construction Costs and with the amount within **Owner's** Project Budget available for costs of Construction Work. **DP** and **CMAR** shall complete the reconciliation not later than seven (7) days after completion of both estimates. This reconciliation shall provide an estimate no greater than the amount within **Owner's** Project Budget available for costs of Construction Work before the Design Development subphase under **Section 2.3.4** may begin.

2.3.4 Design Development Subphase

(i) Based on the Schematic Design Documents (SDDs) and any amendments approved by the **Owner** in the Architectural Program or the Project Budget, the **DP** shall prepare Design Development Documents (DDs) for review with the **Owner** and the **CMAR** and for the **Owner's** approval. The Design Development Documents shall consist of drawings and other documents to delineate and define the general design of the entire Project, including size and character of architectural, structural, mechanical and electrical systems, materials, and any other Project elements as may be appropriate.

(ii) The Design Development Documents shall consist of at least the following:

- (1) Site survey and annotated survey to show items for demolition, removal or relocation,
- (2) Site plan:
 - (a) Final contours/grading,
 - (b) Paving, sidewalk, curb, fence, parking and other site improvements (showing location and overall dimensions), and
 - (c) Retaining walls and details.
- (3) Foundation plans:
 - (a) Footing and foundation sizes, reinforcing, elevations,
 - (b) Below grade concrete wall thickness, and
 - (c) Waterproofing, damp-proofing, drainage - standard details, types.
- (4) Structural framing plans, including:
 - (a) Horizontal and vertical member size, sample reinforcing,
 - (b) Typical floor and roof construction details, thicknesses,
 - (c) Typical exterior wall supports, bracing, ties, reinforcing,
 - (d) Lateral bracing methods, location,
 - (e) Fireproofing - NFPA designation,
 - (f) Vibration isolation or other special details, and
 - (g) Design live and dead loads tabulated for all floors, areas, and roofs.
- (5) Exterior wall elevations, all plans,
- (6) Typical wall sections,
- (7) Typical roofing and sheet metal details,
- (8) Floor plans, all levels and roofs:
 - (a) Partition type identification,
 - (b) Smoke and fire compartmentation,
 - (c) Built-ins and fixed equipment shown and noted, and
 - (d) 1/4" scale furniture and movable equipment layouts, for ALL spaces.
- (9) Stair and elevator details, types,
- (10) Room finish and door schedule for typical areas/spaces,
- (11) Miscellaneous specialties and equipment schedule,
- (12) Fixed equipment schedule, locations, service requirements,

- (13) Plumbing work plans:
 - (a) Fixture schedule, locations,
 - (b) Equipment schedule, locations,
 - (c) Waste and vent riser diagram with types, locations, key sizes, and
 - (d) Water piping, locations (sizes for pipes larger than 1").
- (14) Roof drainage system, locations, key sizes,
- (15) Fire protection systems,
- (16) Mechanical systems:
 - (a) Equipment schedule, locations, sizes, types,
 - (b) Chilled, condenser, hot water, steam, and condensate piping systems, locations, riser diagrams, and
 - (c) Equipment connections and supports - standard details.
- (17) HVAC piping, locations (sizes for pipes larger than 1"),
- (18) Power distribution diagram:
 - (a) Power distribution equipment schedule, locations,
 - (b) Feeder sizes,
 - (c) Emergency generator size, locations,
 - (d) Uninterruptible power supply equipment size, locations if required, and
 - (e) Grounding - standard details (**DP**).
- (19) Interior lighting and power, plans and details:
 - (a) Fixture and switch locations with identification,
 - (b) Typical receptacle and power outlet locations, and
 - (c) Special requirements noted.
- (20) Motor control schedule with starter and circuit sizing,
- (21) Communication, data transmission and alarm systems,
- (22) Proposed cash allowances,
- (23) Current update of Project Manual,
- (24) Description of proposed alternates and cost estimates for each, and
- (25) Estimate of Probable Construction Costs based on the foregoing, with area breakdowns (net and gross) and analysis.

(iii) The **DP** shall work in a collaborative, cooperative and coordinated manner with the **CMAR** in developing items defined in **Item (ii)** above. If agreement by the **DP** and the **CMAR** is not attainable, the **Owner** representative will make the final determination on the matter.

(iv) The **CMAR** shall develop and submit to **Owner** and **DP** an Estimate of Construction Costs.

(v) The **DP** and the **CMAR** shall reconcile the **DP's** Estimate of Probable Construction Cost with the **CMAR's** Estimate of Construction Costs and with the amount within **Owner's** Project Budget available for costs of the Construction Work. **Design Professional** and **CMAR** shall complete the reconciliation not later than seven (7) days after completion of both estimates. This reconciliation shall provide an estimate no greater than the amount within **Owner's** Project Budget available for costs of Construction Work before the Construction Documents subphase under **Section 2.3.5** may begin.

2.3.5 Construction Documents Subphase

(i) Based upon the approved Design Development Documents (DDs) and any further amendments of any kind approved by the **Owner**, the **DP** shall prepare detailed Construction Documents (CDs) setting forth the requirements for the construction of the entire Project, including complete Drawings, Specifications, a revised Estimate of Probable Construction Cost, and complete bid packages for the **CMAR's** use for each portion of the Construction Work to be bid separately and, if the Construction Work is to be done in Work Packages, complete sets of bid packages for each Work Package. The **DP** must be aware of, and conform to, the order of precedence provisions in **Section 3.10.3**. The Construction documents are subject to review by the **Owner** and the **CMAR** and to approval by the **Owner**.

(ii) If the GMP has been agreed by **Owner** and **CMAR** before completion of the Construction Documents, the Construction Documents will be subject to review by **CMAR** for conformance with the GMP Setting

Drawings, Specifications, Assumptions and Clarifications as provided in **Section 2.11.3** or **3.2.5**, as applicable.

(iii) All drawings and specifications included in the Construction Documents shall bear the dated signature and seal of the **DP**. Except as expressly provided, the **DP** and the **DP Consultants** shall be fully responsible for all design provided under this Agreement.

(iv) The **DP** shall file all documents and obtain all approvals required for design approval by governmental authorities having jurisdiction over the Project and/or designated by the **Owner**. The **Owner** will sign applications and pay applicable fees. The **DP** shall also assure that the Project meets all applicable statutory requirements for public buildings.

2.4. Design Professional Miscellaneous

Most of DP's Design Phase services are located in other provisions of this Operating Manual. These services can be located by looking for the term, **DP**, in bold in the other provisions of this Operating Manual.

The services to be furnished by the **DP** for the Design Phase under the Program Development subphase, Schematic Design subphase, Design Development subphase, and Construction Document subphase shall be rendered in the same sequence as they appear in this Operating Manual. The **DP** shall receive the **Owner's** written approval of a subphase prior to proceeding into the next subphase.

If the **Owner** requests advice from the **DP**, the **DP** will advise the **Owner** on selection of the **CMAR**. If the **Owner** and the **CMAR** discuss pre-qualification of **Subcontractors** and the **Owner** requests advice from the **DP**, the **DP** shall advise the **Owner** on the acceptability of **Subcontractors** proposed by the **CMAR**.

The **DP** shall provide reasonable collaboration, cooperation and coordination to the **CMAR** in the **CMAR's** development of its Estimates of Construction Costs and its Guaranteed Maximum Price.

If at any time either the **CMAR's** Estimate of Construction Costs or the **DP's** Estimate of Probable Construction Costs (after the prescribed reconciliation process) exceeds the amount within **Owner's** then current Project Budget available for costs of the Construction Work, or if the **CMAR's** proposed GMP exceeds the sum of the amount within **Owner's** then current Project Budget available for costs of the Construction Work or if **Owner** elects to construct the Project using the design-bid-build project delivery method and the bid amount of the lowest responsive and responsible design-bid-build bidder exceeds the amount within **Owner's** then current Project Budget available for costs of the Construction Work, the **DP** shall at no cost to the **Owner**:

- (i) Revise all or any part of the Project drawings, specifications or both as the **Owner** may deem advisable for the purpose of reducing the cost of the Construction Work to within the amount available for costs of Construction Work in the Project Budget or within the GMP, as applicable.
- (ii) Perform any or all of the services described above as may be necessary to obtain (i) a **CMAR** Estimate of Construction Costs not exceeding the amount within **Owner's** current Project Budget available for costs of the Construction Work, (ii) a **DP** Estimate of Probable Construction Costs not exceeding the amount within **Owner's** current Project Budget available for costs of the Construction Work, and (iii) a GMP not exceeding the amount within **Owner's** then current Project Budget available for costs of the Construction Work.

All costs to correct Design Submission Documents to bring the then estimated Construction Costs back within the portion of the Project Budget available to pay the costs of the Construction Work or the Guaranteed Maximum Price and of preparing revised Estimates of Probable Construction Costs shall be borne by the **Design Professional** and costs of preparing revised Estimates of Construction Costs shall be borne by the **CMAR**.

The **DP** shall review the proposed CPM Schedule prepared by **CMAR** and provide written comments to **Owner** and **CMAR**. **DP** shall also review and comment upon to **CMAR** and **Owner** any proposed modifications to the CPM Schedule.

The **DP** shall review the proposed Schedule of Values submitted by the **CMAR** and provide a written evaluation to the **Owner**. The **DP** shall seek to protect the **Owner** from front-end loading or unbalanced pricing, or both, by

the **CMAR**. **DP** shall also review and comment upon to **CMAR** and **Owner** any proposed modifications to the Schedule of Values.

Based on the Design Submission Documents approved by the **Owner** for use in the bid process for selecting Subcontractors, the **DP** will do the following in connection with the **CMAR's** bid process for selecting **Subcontractors**:

- (i) Prepare complete bid packages for the **CMAR's** use for each portion of the Construction Work to be bid separately and, if the Construction Work is done in Work Packages, complete sets of bid packages for each Work Package;
- (ii) If and to the extent **Owner** has given its prior approval, provide written interpretations and clarifications of the Owner approved Design Submission Documents requested by the **CMAR** or any potential bidder; and
- (iii) Provide such other reasonable assistance to the **CMAR** as the **CMAR** and **Owner** request.

Award of the CMAR Construction Contract, approval of the GMP and the decision to execute and deliver the **CMAR** Construction Contract will be made solely by the **Owner**. Award of the **CMAR** subcontracts will be made solely by the **CMAR**, except as specifically provided otherwise in this Operating Manual.

If at any time the **Owner** terminates the CMAR Design Phase Services Contract or the CMAR Construction Contract for convenience or otherwise, the **Owner** will have the right to continue the Project on a construction manager at risk basis and the **DP** will perform its services under the DP Contract Documents with the **Owner** and any substitute **CMAR**.

As an alternative to the immediately preceding subsection, after any termination of a CMAR Design Phase Services Contract or CMAR Construction Contract, the **Owner** will have the right to proceed with the Project under the design-bid-build project delivery method in which event the **DP** will provide the Design Phase services under the DP Contract Documents without participation of a **CMAR** and upon completion of the Construction Documents and their approval by **Owner** will proceed as follows. In any such case, each reference in the DP Contract Documents to the **CMAR** will be deemed to be a reference to the construction contractor under the design-bid-build method.

- (i) If multiple general contracts have been approved by the **Owner** for the Project, the **DP** shall prepare bid documents for prospective bidders.
- (ii) Based on the Construction Documents approved by the **Owner**, the **DP** shall administer the advertising and distribution to prospective bidders.
- (iii) Before bid documents are made available to prospective bidders, the **DP** shall prepare and submit to the **Owner** a pre-bid progress construction schedule in form appropriate to the size, complexity and scope of the Project, to show the major completion milestones required by the **Owner**. The incorporation of this pre-bid progress construction schedule into the bid documents will be determined only after consultation with the **Owner** and approval by the **Owner**.
- (iv) The **DP** and the **Owner** will hold a pre-bid conference, and the **DP** shall prepare an agenda appropriate to the size, complexity and scope of the Project. The **DP** shall also render and deliver to **Owner** any requested interpretations, clarifications or Addenda in written form.
- (v) The **DP** shall prepare and distribute all **Owner**-approved interpretations, clarifications or addenda in a manner that will ensure and document receipt by prospective bidders prior to the public bid.
- (vi) If requested by the **Owner**, the **DP** shall assist the **Owner** at the public bid by opening, recording and/or certifying bids received.
- (vii) The **DP** shall assist the **Owner** as requested to review all bids for reasonableness of the bid price, clerical errors, bidder responsiveness and bidder qualifications and shall recommend to the **Owner** the lowest responsible and responsive bidders.
- (vii) The **DP** shall conduct pre-award conferences with successful bidders, assist the **Owner** in preparing construction contracts and obtaining full execution thereof and advise the **Owner** on the acceptability of **Subcontractors** proposed by contractors.
- (viii) Award of the contract for construction will be made solely by the **Owner**.
- (ix) In the event the base bid(s) of the lowest responsible and responsive bidder(s) exceed the amount within **Owner's** current Project Budget available for costs of the Construction Work, the **DP** shall at no cost to the **Owner**:

- (A) Revise all or any part of the drawings and/or specifications of the Project that the **Owner** may deem advisable for the purpose of reducing the project cost to within the amount within **Owner's** current Project Budget available for costs of the Construction Work.
 - (B) Perform any or all of the services described above as may be necessary to obtain a bid(s) not exceeding the amount within **Owner's** current Project Budget for costs of the Construction Work.
- (x) In the event that **Owner** engages a construction manager-agent in connection with the Project after the **Owner** decides to proceed under the design-bid-build project delivery method, the CM-A will participate in the steps described in **Items (i) through (ix)** in a manner prescribed by **Owner** and the role of the **DP** will be adjusted accordingly.

2.5 CMAR Miscellaneous

2.5.1 Some of **CMAR's** Design Phase activities and obligations and some of the terms and conditions applicable to **CMAR** during the Design Phase are located in other provisions of this Operating Manual and in the other CMAR Design Phase Services Contract Documents. The activities, obligations, terms and conditions can be located by looking for the term, **CMAR**, in bold.

- (i) **CMAR** will provide leadership to the **Design Professional**, **CMAR** and **Owner** as a group during the Design Phase for all cost, schedule or alternative systems issues and for all matters that would affect performance of the Construction Work.
- (ii) **CMAR** will interact with **DP** and **Owner** in a collaborative, cooperative and coordinated manner as provided in this Operating Manual and as otherwise necessary or appropriate.
- (iii) **CMAR** will attend meetings as provided in **Section 1.7**.
- (iv) Within 30 days of executing the CMAR Design Phase Services Contract, **CMAR** will prepare and submit to **Owner** a Critical Path Method (CPM) master schedule including the Design Phase and the Construction Phase and meeting the requirements in **Section 3.16.2**. The CPM master schedule shall include three (3) weeks for **Owner** to review the Design Submission Documents at each subphase of the Design Phase and adequate time for government agency reviews and all other necessary approvals. The schedule shall indicate the dates for the start and completion of the various stages of the Project, including, among others, the dates when **Owner** information and approvals are required and all necessary shutdowns or suspensions of **Owner** or separate vendor activities on the Site (if any). The schedule shall allow for multiple bid packages and for Work Packages or portions of the Construction Work to be accepted separately by the **Owner** if required by **Owner**. **CMAR** will update and reissue, throughout the Design Phase and the Construction Phase, the Critical Path Method master schedule for the Project as necessary and appropriate to reflect adjustments in the schedule. Updates will be subject to approval by **Owner**.
- (v) **CMAR** will provide **Owner** and **Design Professional**, on a monthly basis, a written status report detailing progress during the Design Phase, including whether progress is according to the CPM master schedule. Each report shall include identification of any problems, potential problems or other items that have been identified and that should be addressed or require resolution so as not to jeopardize completion of the Project within **Owner's** time schedule.
- (vi) CMAR will review and evaluate costs, constructability, schedule, and implications of alternative designs and systems and materials. The CMAR will also:
 - (A) Do value engineering;
 - (B) Give advice regarding use of the Site, Site improvements, selection of materials, building systems and equipment;
 - (C) Make recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction.
- (vii) **CMAR** will perform such "constructability reviews" and "value engineering" and "cash flow projections" as are requested by **Owner** or as recommended by **CMAR** or **DP** and approved by **Owner** during each subphase of the Design Phase. In addition to any other requests of **Owner**, in coordination with the **DP**, the **CMAR** shall

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

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

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

(x) As provided in **Sections 2.3 and 2.7**,

(A) **CMAR** shall prepare and submit to **Owner** and **DP** detailed Estimates of Construction Costs in order to verify that the anticipated costs of the Construction Work is within the portion of **Owner's** Project Budget available to pay costs of the Construction Work.

(B) **CMAR** shall work with the **DP** to reconcile any variations between **DP's** Estimates of Probable Construction Costs and **CMAR's** Estimates of Construction Costs and any variations of the foregoing from the portion of **Owner's** Project Budget available for costs of the Construction Work.

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

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

(xii) As provided in **Section 2.10**, **CMAR** shall prepare a proposed Guaranteed Maximum Price, a proposed GMP Schedule, proposed GMP Setting Drawings, Specifications, Assumptions and Clarifications, the proposed **CMAR** construction phase fee, a proposed Schedule of Values and any related documents. The **Owner** and the **CMAR** will then follow the process in that section to try to reach agreement on a Guaranteed Maximum Price and related matters.

(xiii) As provided in **Sections 2.11 and 2.12**, **CMAR** will take the specified actions to select any **Subcontractors** to be selected early, to pre-qualify **Subcontractors**, to prepare **Subcontractor** bid packages, and to conduct the bidding process to select **Subcontractors** to perform the Construction Work.

2.5.2 The **CMAR** will perform its Design Phase services in consideration of the **Design Phase Services Fee**. The amount and method of payment of the Design Phase Services Fee will be as provided in **Section 5.1** of the **CMAR** Design Phase Services Contract.

2.5.3 The **CMAR** shall thoroughly acquaint itself with all information provided by the **Owner** or the **Design Professional** concerning the conditions of the Site. In addition, the **CMAR** shall be responsible for obtaining

information concerning conditions of the Construction Work typically obtained within the construction industry to assess conditions for similar projects. The **CMAR** will take this information into account in performing its services during the Design Phase.

The **CMAR** agrees that before submitting a proposed Guaranteed Maximum Price the **CMAR** will thoroughly examine (i) the Site, (ii) the current Design Submission Documents, (iii) boring data and all other soils information and as-built data provided to **CMAR** by **Owner** or the **Design Professional**, (iv) all other information provided by **Owner** or the **Design Professional** concerning the conditions of the Construction Work, and (v) all information which the **CMAR** is responsible to obtain under this **Section 2.5.3** (the information described in **Items (i)** through **(v)** is referred to collectively as the “**CMAR Site Information**”). The **CMAR** acknowledges that boring data and other soils information and as-built data made available to it is only a general indication of materials and/or conditions likely to be found adjacent to borings or in existing structures or facilities or other areas. If the **CMAR** determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the **Design Professional** and the **Owner** in writing. If, after determining that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the **Owner**, the **CMAR** remains dissatisfied or uninformed, the **CMAR** shall refrain from submitting a proposed Guaranteed Maximum Price until the matter is resolved. If the **CMAR** submits a proposed Guaranteed Maximum Price, the **CMAR** shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information. By submission of a proposed Guaranteed Maximum Price, **CMAR** represents and warrants to **Owner** that **CMAR** has examined and evaluated the **CMAR Site Information** and has taken the **CMAR Site Information** into account in preparing its proposed GMP.

Execution of the **CMAR Construction Contract Documents** by the **CMAR** is a representation by the **CMAR** to the **Owner** that the **CMAR** has visited the Site, become familiar with the local conditions under which the Construction Work is to be performed and has correlated personal observations with the requirements of the Construction Documents and the other **CMAR Construction Contract Documents**.

2.6 Owner Miscellaneous

2.6.1 The **Owner** will provide to the **DP** and the **CMAR** information regarding requirements for the Project including budget information. The **Owner** will shall furnish to the **DP** and the **CMAR** the **Owner's Project Criteria**. The **Owner** will shall furnish to the **DP** and the **CMAR** the amount within the **Owner's Project Budget** available for the costs of the Construction Work.

2.6.2 The **DP** shall notify the **Owner** in writing if the **DP** requires additional information and of any information provided by the **Owner** which the **DP** believes to be unclear or insufficient for the successful completion of the Project.

2.6.3 The **Owner**, through the **DP** and consistent with the **DP Contract Documents**, shall furnish the **CMAR** a sufficient quantity of documents required for the **CMAR** to perform its services under the **CMAR Design Phase Services Contract Documents** during the Design Phase.

2.6.4 The **Owner** will designate a representative to act on its behalf with respect to the Project (“**Owner's Representative**”).

2.6.5 The **Owner** will attend meetings as provided in **Section 1.7** and will otherwise interact with the **DP** and the **CMAR** as necessary and appropriate.

2.6.6 **Owner** shall review and approve or reject the **DP's Estimates of Probable Construction Costs** and the **CMAR's Estimates of Construction Costs** within three (3) weeks of receipt of the documents, provided the documents are timely delivered to **Owner** with the respective Design Submission Documents and are delivered to **Owner** when required under the **DP Contract Documents** and the **CMAR Design Phase Services Contract Documents**.

2.6.7 As to all Design Phase activities of the **CMAR** and the **DP**, the **Owner** shall reasonably collaborate, cooperate and coordinate with the **CMAR** and the **DP** to keep the estimated costs of the Construction Work within the applicable portions of the Project Budget available for costs of the Construction Work. In this

regard, the **Owner** will reasonably consider all appropriate and reasonable recommendations of the **CMAR** and the **DP**, including, without limitation, recommendations for redesign, deductive alternates, reductions in the Construction Work, value engineering and modifications to the Design Submission Documents.

2.6.8 If the **Owner** should observe or otherwise become aware of any fault or defect in the Project or non-conformity with the DP Contract Documents, the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents, **Owner** will give prompt written notice thereof to the **DP** and the **CMAR**. Failure of the **Owner** to notify the **CMAR** or the **DP** shall not reduce, change, lessen or alleviate in any way, **CMAR's** or **DP's** duties and obligations under the CMAR Design Phase Services Contract Documents, the CMAR Construction Contract Documents or the DP Contract Documents, respectively.

2.7 DP's Estimates of Probable Construction Costs, CMAR's Estimates of Construction Costs, and CMAR'S Schedule of Values

NOTE: Please see **Section 2.3** for certain other provisions on DP's Estimates of Probable Construction Costs and CMAR's Estimates of Construction Costs.

2.7.1 The **DP** will collaborate, cooperate and coordinate with the **CMAR** in the **CMAR's** development of its Estimates of Construction Costs and the Guaranteed Maximum Price. The **CMAR** will collaborate, cooperate and coordinate with the **DP** in the development of its Estimates of Probable Construction Costs.

2.7.2 Each DP Estimate of Probable Construction Costs, CMAR Estimate of Construction Cost and CMAR's Schedule of Values shall include without duplication:

- (i) All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Construction Work. All fixed equipment, site improvements, utility and equipment installations are also included.
- (ii) The cost of labor and materials to be furnished by the **Owner** calculated at current market rates, including, among others, a reasonable allowance for overhead and profit,
- (iii) The cost of any **Owner** equipment contract to be assigned by **Owner** to **CMAR** or labor for installation for equipment separately provided by **Owner** which has been designed, specified, selected or specifically provided for by the **Design Professional**.
- (iv) The Construction Phase Fee;
- (v) All bond and insurance premiums;
- (vi) All applicable taxes, including, without limitation, applicable sales taxes; and
- (vii) A Contingency.

2.7.3 The **DP** Estimates of Probable Construction Costs and the **CMAR** Estimates of Construction Costs shall include the costs of the Construction Work and shall not include the **CMAR's** Design Phase Services Fee, sums due the **Design Professional**, the costs of land, rights of way, financing or other costs which are the responsibility of the **Owner**.

2.7.4 The **DP** shall base each Estimate of Probable Construction Costs and the **CMAR** shall base each Estimate of Construction Costs on the latest Design Submissions Documents. The **DP** and the **CMAR** shall discuss the materials, equipment, component systems and types of construction contemplated by the **DP** to the extent such items are not in the latest Design Submission Documents.

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

2.7.6 Each **DP** Estimate of Probable Construction Costs and **CMAR** Estimate of Construction Costs will be prepared using an elemental systems method of allocating construction costs and fees, will be in the level of detail specified by Owner and will otherwise be in a form agreed by DP, CMAR and Owner.

2.7.7 The requirements in this **Section 2.7.7** are in addition to the requirements for **CMAR** Estimates of Construction Costs in this Operating Manual. The **CMAR** shall prepare its first Estimate of Construction Costs as soon as major Project requirements have been identified and update the estimate no less frequently than bimonthly until completion of Schematic Design Documents. Within two weeks of **CMAR's** receipt of completed Schematic Design Documents, the **CMAR** shall prepare a quantity take-off Estimate of Construction Costs. The **CMAR** shall update the quantity take-off Estimate of Construction Costs no less frequently than bimonthly. During the Design Development Phase, the **CMAR** shall prepare a final Estimate of Construction Costs preliminary to providing the proposed Guaranteed Maximum Price.

2.7.8 All **DP** Estimates of Probable Construction Costs and all **CMAR** Estimates of Construction Costs shall include a Contingency.

2.7.9 After **Owner** and **CMAR** agree on a Guaranteed Maximum Price and in any event during the Construction Documents subphase of the Design Phase, the **CMAR** shall continually monitor the cost estimates and develop cost estimates to help assure that the cost of the Construction Work remains within both the portion of the **Owner's** Project Budget available for costs of the Construction Work and the Guaranteed Maximum Price.

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

2.7.11 **CMAR** shall submit all Estimates of Construction Costs to the **DP** for review prior to submission of the estimates to **Owner**. **DP** shall submit all Estimates of Probable Construction Costs to the **CMAR** before submission of the estimates to **Owner**. **DP** and **CMAR** shall reconcile their respective cost estimates not later than (7) days after **DP's** receipt of **CMAR's** Estimate of Construction Costs and **CMAR's** receipt of **DP's** Estimate of Probable Construction Costs and the respective Design Submission Documents to assure the **Owner** that the **DP's** and **CMAR's** estimates are within the portion of the Project Budget available to pay costs of the Construction Work and, when agreed to by **Owner** and **CMAR**, the Guaranteed Maximum Price. If the **DP** and **CMAR** can not agree on any individual cost items, then the highest identified cost will be utilized and noted as such by the **CMAR** and the **DP** in their respective estimates submitted to the **Owner**.

2.7.12 After the **CMAR** and the **DP** review each other's estimates and reconcile them, each of the **DP** and the **CMAR**:

- (i) Shall notify the **Owner** if it appears that the **DP's** Estimate of Construction Costs and the **CMAR's** Estimate of Construction Costs will exceed the portion of the Project Budget available to pay costs of the Construction Work or the Guaranteed Maximum Price.
- (ii) Shall satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the **Owner**.
- (iii) Shall make reasonable recommendations for corrective action consistent with the portion of the Project Budget available for payment of costs of the Construction Work or the Guaranteed Maximum Price.

All costs to correct Design Submission Documents to bring the estimate of Construction Costs back within the portion of the Project Budget available to pay the costs of the Construction Work or the Guaranteed Maximum Price and all costs of revising **DP's** Estimate of Probable Construction Cost shall be borne by the **Design Professional** and all costs of revising **CMAR's** Estimate of Construction Costs shall be borne by the **CMAR**.

2.8 Owner's Right to Terminate for Convenience

If at any time before **Owner** issues a written directive for **CMAR** to proceed with the Construction Work (regardless of whether before or after the Guaranteed Maximum Price is agreed to by **CMAR** and **Owner** executing and delivering the **CMAR** Construction Contract), it is reasonably apparent to the **Owner** that the cost of the Construction Work cannot be kept within the portion of the Project Budget available for costs of the Construction Work or the Guaranteed Maximum Price, the **Owner** will have the right, but not the obligation, to

terminate the CMAR Design Phase Services Contract Documents and, if in effect, the CMAR Construction Contract Documents for convenience in accordance with **Section 7.1** of the General Conditions.

2.9 Alternates

2.9.1 Upon authorization by the **Owner**, the **DP** may include in the Project additive or deductive alternates, or both.

2.9.2 If the **Owner** has required the **DP**, after the execution of the DP Contract Documents, to include alternates in the Project, the documented cost of the preparation of those alternates shall be used to negotiate additional compensation for the **DP** whether the alternates are accepted or rejected.

2.9.4 If the **DP** elects to include alternates for the purpose of determining cost, or for any other reason, no compensation will be allowed the **DP** for such alternates.

2.9.5 Alternates shall not render the Project over the amount within Owner's Project Budget available for costs of the Construction Work or unusable. Therefore, the **DP** in determining the each Estimate of Probable Construction Cost must include the base bid(s) and necessary alternate costs for comparison with the **CMAR's** Estimate of Construction Costs and with the amount within the **Owner's** Project Budget available for payment of the costs of the Construction Work.

2.10 Guaranteed Maximum Price and GMP Schedule

2.10.1 Most of the provisions of this **Section 2.10** apply to the Design Phase but some of them apply to the Construction Phase. In the event that a CMAR Construction Contract is executed by **CMAR** and **Owner** and the other conditions for commencement of the Construction Phase in **Section 1.1** are satisfied, the provisions of this **Section 2.10** will apply to the Construction Phase as well as the Design Phase.

2.10.2 No Construction Work shall commence until a Guaranteed Maximum Price for the entire Construction Work is agreed in writing by **CMAR** and **Owner** and the other conditions for commencement of the Construction Phase in **Section 1.1** have been satisfied. If the Construction Work is being done in Work Packages, there will be no GMP for the individual Work Packages.

2.10.3 At a time determined by the **Owner** and the **CMAR** and no later than the conclusion of the Design Development subphase, the **CMAR** shall propose a Guaranteed Maximum Price for the entire Construction Work. The proposed GMP shall not exceed the amount within the **Owner's** Project Budget available for cost of the Construction Work. To do this the **CMAR** will submit a proposed completed form of the CMAR Construction Contract in the form and setting forth the terms and attaching the documents called for by **Exhibit B** ("**Proposed CMAR Construction Contract**").

With the submission of the Proposed CMAR Construction Contract, the **CMAR** shall also submit a detailed CPM construction schedule for the entire Construction Work, which shall provide for the expeditious and practicable execution of the Construction Work. The schedule shall be consistent with any previously issued schedules, not to exceed time limits current under the Contract Documents for the entire Construction Work and shall be related to the entire Construction Work and the entire Project to the extent required by the CMAR Design Phase Contract Documents and the CMAR Construction Contract Documents, if and when the latter are executed.

2.10.4 The proposed GMP and GMP schedule and the final GMP and GMP Schedule will include a contingency ("**Contingency**") which may be used by CMAR to cover (i) the amount of any excess of the amount bid by the successful Subcontractor for any Construction Work over the respective amount for that Construction Work in the GMP Schedule, but not Construction Work to be performed by the **CMAR**, if the **CMAR** is permitted to self-perform some of the Construction Work and (ii) the amount of **any other Actual Cost of the Construction Work for Construction Work to be performed by a Subcontractor** (but not Construction Work to be performed by the **CMAR**, if the **CMAR** is permitted to self-perform some of the Construction Work) and in the case of (ii) with an additional amount of the Contingency being allocated to non-Construction Work items in the GMP Schedule in the same proportion as Construction Work items and non-Construction Work items had in the original GMP Schedule.

2.10.5 The following are requirements relating to the Proposed CMAR Construction Contract:

- (i) The Proposed CMAR Construction Contract is to have attached a proposed GMP schedule in elemental systems format in a form mutually satisfactory to CMAR and Owner and with the level of detail specified by Owner. Before filling in numbers in the proposed GMP schedule, the **CMAR** will develop the proposed form of the GMP schedule and obtain **Owner's** approval of the form or make changes in the proposed forms as requested by the **Owner**.
- (ii) The proposed GMP for the entire Construction Work and the proposed GMP schedule must include a Contingency as separate line item.
- (iii) If the Construction Work is to be done in Work Packages, the proposed GMP must be allocated among the Work Packages in the proposed GMP schedule. This will be done by having a separate vertical column for each Work Package in the proposed GMP schedule (including, without limitation, Contingency) and allocating the amount in each line item among the Work Packages by inserting the appropriate amount in the column for each Work Package.
- (iv) The Proposed CMAR Construction Contract is also to have a proposed schedule of values ("**Schedule of Values**") for the entire Construction Work using an elemental systems allocation of costs and fees. The Schedule of Values shall be based upon the proposed Guaranteed Maximum Price.
- (v) The Proposed CMAR Construction Contract is also to have attached a list of the drawings and specifications and other documents used by **CMAR** in preparing the proposed GMP and a statement of the clarifications and assumptions made by the **CMAR** to supplement the information in the drawings and specifications (collectively, the "**GMP Setting Drawings, Specifications, Assumptions and Clarifications**"). The list of drawings, specifications and other documents shall include the project manual ("**Project Manual**"), the supplementary general conditions ("**Supplementary General Conditions**") as and when issued by the **DP**, and the Owner's General Project Requirements. The **CMAR** shall use the Project Manual, the Supplementary General Conditions and Owner's General Project Requirements in preparing the proposed GMP. Each clarification and assumption will be shown in the form of an attached drawing, unless another methodology would more accurately and efficiently set forth the clarification or assumption.
- (vi) In preparing the clarifications and assumptions that **CMAR** proposes to be included in the GMP Setting, Drawings, Specifications, Assumptions and Clarifications and to be used by the **CMAR** in developing the proposed Guaranteed Maximum Price, the **CMAR** shall consult with the **DP** and if there are any disagreements as to the clarifications and assumptions between the **DP** and the **CMAR**, the disagreements will be discussed by the **Owner**, the **DP** and the **CMAR**.
- (vii) **CMAR** and **Owner** acknowledge that the drawings and specifications will be subject to further development that is consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications or reasonably inferable therefrom. The **CMAR** understands and agrees that if the **CMAR** and **Owner** agree on a GMP, the **CMAR** will be obligated to perform the Construction Work in accordance with the Construction Documents thereafter approved by the Owner (regardless of whether approved by the **CMAR**) in return for payment by the **Owner** of an amount equal to the Actual Cost of the Work up to but not exceeding (i) the Guaranteed Maximum Price or (ii) the Open Book Cost of the Construction Work, except to the extent that the Construction Documents contain items or details that are not consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications and are not reasonably inferable therefrom. Therefore, in determining the proposed GMP the **CMAR** will take into account such further development of the Design Submission Documents. The **Owner** and the **Design Professional** may review and discuss the GMP Setting Drawings, Specifications, Assumptions and Clarifications with the **CMAR** in evaluating the proposed GMP. Any such review or discussion and any failure to review or comment on or to advise of any errors or omissions in the GMP Setting Drawings, Specifications, Assumptions and Clarifications by the **Owner** or the **Design Professional** shall not be a basis for the **CMAR** to place any responsibility on the **Owner** or the **Design Professional** for any deficiency in the accuracy or completeness of the GMP Setting Drawings, Specifications, Assumptions or Clarifications or any error by the **CMAR** in preparing its proposed GMP. **CMAR** shall have sole

responsibility to assure that the GMP Setting Drawings, Specifications, Assumptions and Clarifications are an accurate and complete statement of the **CMAR's** intent.

2.10.6 The **Owner** will, at its sole discretion, have the option to accept the Proposed CMAR Construction Contract or to request the **CMAR** to modify one or more items in or attached to the Proposed CMAR Construction Contract. If the **CMAR** and **Owner** reach agreement on the items and attachments to be included in the CMAR construction contract, **CMAR** and the **Owner** will execute the CMAR construction contract in the form of **Exhibit B** containing the agreed items and attachments ("**CMAR Construction Contract**"). In this event, the GMP in the CMAR Construction Contract will be the GMP for the Construction Work and the GMP schedule included in the CMAR Construction Contract will be the GMP Schedule for purpose of the CMAR Construction Contract Documents, as such GMP Schedule is changed from time to time as provided in **Sections 2.10.7** and **2.10.8**. This GMP and the GMP Schedule must include the Contingency. Alternatively, the **Owner** may, in its sole discretion, elect to not execute the proposed CMAR Construction Contract and may also elect to terminate the CMAR Design Phase Services Documents for convenience per **Article 7** of the General Conditions.

2.10.7 As part of the process of approving any Change Order, **Owner** and **CMAR** shall also agree upon any needed change to the GMP and the GMP Schedule. If the Guaranteed Maximum Price is to be adjusted due to changes in a Change Order, the cost of the changes shall be priced under **Section 3.33.4** of this Operating Manual.

2.10.8 The following are the requirements for and limitations on movement of amounts within the GMP Schedule during the Design Phase and the Construction Phase. Movements of amounts within the GMP Schedule shall not change the GMP.

(i) Subject to the requirements and limitations below, the **CMAR** may move amounts within the GMP Schedule (including, without limitation, the Contingency) from one line to another line and, if the Construction Work is being done in Work Packages, from the vertical column for one Work Package to the vertical column for another Work Package as determined by the **CMAR** in its good faith reasonable judgment.

(ii) In all cases (including movement of any amount from or to the Contingency), before moving any amount in the GMP Schedule and before the discussion and collaboration described below, **CMAR** shall deliver to **Owner** written notice of the movement, which shall include:

- (A) the amount to be moved;
- (B) the line item, and if applicable the Work Package vertical column, from which the amount is being moved;
- (C) the line item, and if applicable the Work Package column, to which the amount is being moved; and
- (D) a revised GMP Schedule after moving the amount.

(iii) The **CMAR** shall meet with **Owner** and **DP** to discuss and collaborate on the proposed changes. If after the discussion and collaboration, **CMAR** elects to make one or more of the changes discussed at the meeting with the **Owner** and the **DP**, **CMAR** may do so and shall at the same time deliver a revised GMP Schedule to **Owner** and the **DP** showing the changes.

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

(iv) Anything in this **Section 2.10.8** or otherwise in the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents to the contrary notwithstanding:

- (A) The only amounts in the GMP Schedule that may be moved are:
 - The Contingency; and
 - Amounts in line items in the GMP Schedule covering Construction Work to be performed by **Subcontractors**, but not Construction Work to be performed by the **CMAR**, if the **CMAR** is permitted to self-perform any Construction Work.
- (B) Contingency may be used only for purposes authorized in **Section 2.10.4**; and
- (C) As to each line item in the GMP Schedule which covers Construction Work to be performed by a **Subcontractor**, but not Construction Work to be performed by the **CMAR**, if the **CMAR** is permitted to self-perform some of the Construction Work, the amount in that line item may only be moved to either Contingency or to another line item in the GMP Schedule that covers Construction Work to be performed by

a **Subcontractor** but not to a line in the GMP Schedule that covers Construction Work to be performed by the **CMAR**, if the **CMAR** is permitted to self-perform some of the Construction Work.

2.11 Subcontractors

2.11.1 Pre-qualification procedures for **Subcontractors** will be established as provided in **Section 2.1**. Among other items included in the pre-qualification procedures will be a requirement that the **CMAR** make a reasonable effort to pre-qualify at least three (3) **Subcontractors** in each trade, a requirement that the **CMAR** submit to **Owner** a list of proposed **Subcontractors** together with such information about the qualifications of each **Subcontractor** as **Owner** may reasonably request and a right by **Owner** to reject any or all of the proposed **Subcontractors**, provided that **Owner** must be reasonable in rejecting a proposed **Subcontractor**.

2.11.2 The **CMAR** shall:

- (i) Pre-qualify **Subcontractors** to bid on bid packages in accordance with the pre-qualification procedures established under **Section 2.1**;
- (ii) With the assistance of **Owner** and the **DP**, prepare the bid packages, including, among other items, the necessary bidding information and bidding forms;
- (iii) Develop **Subcontractor** interest;
- (iv) Establish bidding schedules;
- (v) Advertise for bids; and
- (vi) Conduct pre-bid conferences to familiarize bidding **Subcontractors** with the bidding documents and management techniques and with any special systems, materials, or methods.

The **CMAR** shall review all potential **Subcontractors** with the **Owner** and **Design Professional** and obtain **Owner's** approval of the pre-qualification of each **Subcontractor** as provided in **Section 2.11.1**. If the **CMAR** becomes aware prior to any bid date that less than three (3) pre-qualified **Subcontractors** plan to bid any portion of any bid package or that anticipated bids from previously pre-qualified **Subcontractors** are likely to exceed the current **CMAR's** Estimate of Construction Costs, the Guaranteed Maximum Price or the current Schedule of Values either for the entire Construction Work or, when applicable, for a portion of the Construction Work to be accepted by the **Owner** separately included in the bid package, the **CMAR** shall promptly notify the **Owner**. **CMAR** must make a reasonable effort to obtain a minimum of three (3) bids from pre-qualified **Subcontractors** for each bid package.

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

As to each of **CMAR's** objections, if any, as is determined to be valid, **Owner** will elect one or a combination of the following steps:

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

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

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

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

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

2.12 Early Selection of Certain Subcontractors

Owner has determined that it is advantageous to the **Owner** to have the **Subcontractors** that will perform the Construction Work in the following trades participate in the design process for the Project during the Design Phase: **[INSERT LIST OF MAJOR TRADES THAT CAN MAKE A SIGNIFICANT CONTRIBUTION BY PARTICIPATING IN THE DESIGN PHASE. THE LIST MUST BE TAILORED AND JUSTIFIED BY THE NEEDS OF THE PARTICULAR PROJECT. FOR EXAMPLE: "mechanical, plumbing, electrical, fire sprinklers and glazing"]**. Therefore, **Subcontractors** in these trades will be selected at the beginning of the **CMAR's** participation in the Design Phase. This requires that the **Subcontractor** selection procedures in **Section 2.11** apply in a modified form as set forth below to the selection of each early selected **Subcontractor** ("Early Selected Subcontractor").

The **Early Selected Subcontractors** will be selected using the following procedures.

- (i) At least three (3) pre-qualified **Subcontractors** for each trade will be selected as provided in **Sections 2.11.1** and **2.11.2**.
- (ii) The **CMAR** prepares a draft request for proposals ("**Subcontractor RFP**") for each trade, which includes, among other matters, a request for qualifications, identification of the **Subcontractor's** team for the Project, and specification of the **Subcontractor's** backlog. The **Owner** must review and approve the form and content of the Subcontractor RFP.
- (iii) The **CMAR**, the **Owner** and the **DP** appoint members of a selection committee ("**Subcontractor Selection Committee**").
- (iv) The Subcontractor Selection Committee approves criteria for evaluating responses. The evaluation criteria are to determine the most qualified **Subcontractor** for each trade.
- (v) The Subcontractor RFP is issued.
- (vi) Each competitor submits the requested information. This information is evaluated by the Subcontractor Selection Committee with the help of such analytical support as it determines appropriate. The Subcontractor Selection Committee selects a short list of **Subcontractor** candidates in each trade to be interviewed.
- (vii) The selected **Subcontractor** candidates are interviewed by the Subcontractor Selection Committee. The Subcontractor Selection Committee evaluates the interviews.

(viii) The Subcontractor Selection Committee uses the evaluation criteria to select the Early Selected Subcontractor for each trade based on its evaluation of the information submitted by the **Subcontractor** candidates and its evaluation of the Subcontractor candidates interviews.

(ix) The **Owner** retains in its files the form of the Subcontractor RFP, the submissions by the candidates and any other documentation **Owner** considers appropriate.

The **CMAR** will cause each Early Selected Subcontractor to participate in the Design Phase and to give to **Owner** and **CMAR** such advice concerning the design as requested by **Owner** or **CMAR**. The Early Selected Subcontractors will not be paid by **Owner** any fee or any other amount for such services during the Design Phase.

The **Subcontractor** to perform the Construction Work in each trade for which there is an **Early Selected Subcontractor** will be selected as follows:

(i) A bid package will be prepared for the Construction Work for the **Early Selected Subcontractor's** trade and delivered to the selected **Early Selected Subcontractor**. The bid package will be prepared and have the contents as provided in the applicable parts of **Sections 2.11.3, 2.11.4 and 2.11.5**.

(ii) The **Early Selected Subcontractor** will submit the price for which it proposes to do the Construction Work in the bid package ("**Price Submission**"). The Price Submission must be in a format and contain such information as is required by **CMAR** and **Owner**.

(iii) The **Owner** will select one or more qualified persons to review the Price Submission of each **Early Selected Subcontractor**. The reviewer(s) will report to the **Owner** and the **CMAR** whether the reviewer(s) find the Price Submission to be reasonable and appropriate for the Construction Work to be performed.

(iv) **CMAR** has the responsibility to establish to the **Owner's** satisfaction that the Price Submission of each **Early Selected Subcontractor** is reasonable and appropriate. If the **Owner** is satisfied that the Price Submission is reasonable and appropriate, the **Owner** will advise the **CMAR** that the respective **Early Selected Subcontractor** is selected as **Subcontractor** for the respective portion of the Construction Work. If the **Owner** is not satisfied that the Price Submission is reasonable and appropriate, the **Owner** will so advise the **CMAR** and the **CMAR** will compete the respective portion of the Construction Work in the following manner. There will be a normal **Subcontractor** competition for selection of the Subcontractor for this portion of the Construction Work in accordance with the procedures in **Section 2.11**, except that, notwithstanding any other provision of the **CMAR Design Phase Services Contract Documents** to the contrary, (A) the Price Submission will be the **Early Selected Subcontractor's** bid for that portion of the Construction Work in the **Subcontractor** bidding process, and (B) the **CMAR** must obtain bids for that portion the Construction Work from two other pre-qualified **Subcontractors**.

[NOTE TO USERS OF THIS DOCUMENT: Insert the applicable provision and delete the other version.]

2.13 Work Packages The **Owner** has determined that the design and construction of the Project will not be divided into Work Packages. Accordingly, the provisions in the Contract Documents relating to Work Packages do not apply.

[ORI]

2.13 Work Packages The **Owner** has determined that the design and construction of the Project will be divided into Work Packages. The following provisions apply:

2.13.1 The **Owner** will consult with the **CMAR** and the **DP** as to (i) the number of Work Packages, (ii) the content of each Work Package, (iii) the timing and scheduling of design and construction of each Work Package (including, among other matters, establishing a schedule for commencement, prosecution and completion of the Construction Work included in each Work Package), (iv) the coordination among the Work Packages, and (v) any other matters relating to Work Packages. The **Owner**, the **CMAR** and the **DP** shall

use their good faith best efforts to reach a consensus on all such matters. As to any such matters on which a consensus is not reached, the **Owner** shall make a good faith reasonable final determination.

2.13.2 The CMAR Design Phase Services Fee and the CMAR Construction Phase Fee and the Contract Time(s) take into account the division of the Work into Work Packages and the greater scope of services required.

2.13.2 The DP Basic Compensation takes into account the division of Work into Work Packages and the greater scope of services required.

Some of the provisions of the DP Contract Documents, the CMAR Design Phase Services Documents and the CMAR Construction Contract Documents specifically deal with Work Packages. Others provisions do not specifically deal with Work Packages. Because the design and construction of the Project are to be done in Work Packages, all the provisions of all of the foregoing documents shall be reasonably construed and interpreted to cover the division of the design and construction into Work Packages.

3. CONSTRUCTION PHASE

3.1 Cooperation and Coordination During the Construction Phase

At the commencement of the Construction Phase, **Owner**, **CMAR** and the **Design Professional** will have a meeting to review cooperation, coordination and, if applicable, partnering during the Construction Phase and to establish procedures for the Construction Phase, including, among other matters, handling of submittals and scheduling of Site activities. In addition, **Owner**, **CMAR** and **DP** will determine how to implement the following required meetings. The **CMAR** will schedule and conduct weekly progress meetings at which the **Owner**, the **DP**, and the **CMAR** will discuss jointly such matters as procedures, progress, actual problems, potential problems, fixes to and limits on actual problems and ways to avoid, limit or fix potential and actual problems. **Owner**, **DP** and **CMAR** will contribute their good faith efforts in such discussions to find ways (i) to complete the Project within the Contract Time(s) and within the Guaranteed Maximum Price, (ii) to limit and fix actual problems, and (iii) to anticipate and then avoid, limit or fix potential problems.

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

No actions of cooperation, coordination, or attempted cooperation, attempted coordination or failure to cooperate or coordinate on any matter shall affect or impair the respective rights and responsibilities of **Owner**, **DP** and **CMAR** under the DP Contract Documents and the CMAR Construction Contract Documents.

3.2 General

3.2.1 The provisions in **Section 2** on the Design Phase continue in effect during the Construction Phase and those provision in **Section 2** that cover activities or actions during the Construction Phase are applicable to the **Owner**, the **DP** and the **CMAR** during the Construction Phase.

3.2.2 The intent of the CMAR Construction Contract Documents is to include all items and services necessary for the proper execution and completion of the Construction Work. The CMAR Construction Contract Documents are complementary, and what is required by any one shall be as binding as if required

by all. Construction Work not covered in the CMAR Construction Contract Documents but necessary for the proper completion of the Construction Work will be required unless it is not consistent with the CMAR Construction Contract Documents and is not reasonably inferable therefrom as being necessary to produce the intended results.

3.2.3 The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the CMAR in dividing the Construction Work among Subcontractors or in establishing the extent of the Construction Work to be performed by any trade.

3.2.4 Neither the authority to act given to the **DP** and the **Owner**, either individually or collectively, in the DP Contract Documents or the CMAR Construction Contract Documents nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the **CMAR** or any **Subcontractor**.

3.2.5 The “**Construction Documents**” are the Design Submission Documents (i) prepared and designated by the **DP** as the Construction Documents, (ii) approved by the **Owner** as the Construction Documents, and (iii) reviewed by the **CMAR** and adjusted to the extent, if any, as provided in this **Section 3.2.5** or in **Section 2.11.3**.

The Construction Documents are the plans and specifications that are to be used to perform the Construction Work.

All amendments and modifications of the Construction Documents must be approved in writing by **Owner** and are subject to the same review by **CMAR** and adjustment process as apply to the original Construction Documents and as described below. Upon completion of that process and written approval by **Owner** the amendments and modifications become part of the Construction Documents.

If the Design Submission Documents used in **Subcontractor** bid packages in accordance with **Section 2.11.3** comply with the three requirements in the definition of Construction Documents above, they will be the Construction Documents.

Any other Design Submission Documents that **DP** and **Owner** determine to designate and approve as Construction Documents must be delivered to **CMAR**. **Owner** will give **CMAR** a reasonable opportunity to review the Design Submission Documents. **CMAR** may object to the Design Submission Documents becoming the Construction Documents only if the **CMAR** in good faith reasonably believes that there are items or details in or omitted from the Design Submission Documents that make the Design Submission Documents not consistent with the GMP Setting Drawings, Specifications, Assumptions and Clarifications and not reasonably inferable from the GMP Setting Drawings, Specifications, Assumptions and Clarifications. In such case, the **CMAR** will promptly deliver to **Owner** a memorandum with supporting documentation setting forth the items or details objected to. The **Owner** and the **CMAR** (with such assistance from the **DP** as may be requested by the **Owner**) shall use their good faith best efforts to reach a mutually satisfactory resolution of any **CMAR** objections. As to any such objections on which a mutually satisfactory resolution is not reached, the **Owner** shall make a good faith reasonable final determination.

As to each of **CMAR's** objections, if any, as is determined to be valid, **Owner** will elect one or a combination of the following steps:

- (i) adjustment of the Design Submission Documents to remedy the objection; or
- (ii) adjustment of the GMP by use of a Change Order to fairly reflect the anticipated increased cost of the objected to item or detail.

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

3.3 Owner Miscellaneous

3.3.1 If the **Owner** should observe or otherwise become aware of any fault or defect in the Project or non-conformity with the Construction Documents or the other CMAR Construction Contract Documents, **Owner** will give prompt written notice thereof to the **CMAR**. Failure of the **Owner** or **Owner's representative** to notify the **CMAR** shall not reduce, change, lessen or alleviate in any way, **CMAR's** duties and obligations under the CMAR Construction Contract Documents.

3.3.2 Owner shall, throughout the performance of the Construction Work, cooperate with **CMAR** and perform **Owner's** responsibilities, obligations and services in a timely manner so as not to delay or interfere with **CMAR's** performance of the Construction Work and **CMAR's** other obligations under the CMAR Construction Contract Documents.

3.3.3 Owner's Representative shall be responsible for processing **Owner**-supplied information and approvals or rejections in a timely manner to permit **CMAR** to fulfill its obligations under the CMAR Construction Contract Documents. **Owner's Representative** shall also provide **CMAR** with reasonably prompt notice if it observes any failure on the part of **CMAR** to fulfill its contractual obligations, including errors, omissions or defects in the performance of the Construction Work. Failure of the **Owner** or **Owner's representative** to notify the **CMAR** shall not reduce, change, lessen or alleviate in any way, duties and obligations under the CMAR Construction Contract Documents.

3.3.4 The **Owner** shall review documents submitted by the **CMAR** and shall render decisions pertaining thereto without unreasonable delay.

3.3.5 Owner is responsible for all work performed at the Project by other parties under the **Owner's** control. **Owner** shall contractually require such parties to cooperate and coordinate their activities with **CMAR** so as not to interfere unreasonably with **CMAR's** ability to complete the Construction Work in a timely manner and consistent with the CMAR Construction Contract Documents.

3.4 Design Professional Miscellaneous

3.4.1 The **DP** will provide administration of the Project on behalf of the **Owner** as described in the DP Contract Documents.

3.4.2 In interacting with the **CMAR**, the **DP** will be a representative of the **Owner** during the Design Phase and the Construction Phase (including, without limitation, until the two-(2) year warranty period has expired). The **DP** is not the "**Owner's Representative**" as such term is used in the DP Contract Documents, the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents. The **DP** and the **CMAR** shall advise and consult with the **Owner**. All instructions and communications by the **DP** to the **CMAR** shall be copied to the **Owner**.

3.4.3 The **DP** will have authority to act on behalf of the **Owner** only to the extent provided in the DP Contract Documents. The extent of the duties, responsibilities and limitations of authority of the **DP** as a representative of the **Owner** during construction shall not be modified or extended without the written consent of the **Owner** and the **DP**, which consent of the **DP** shall not be unreasonably withheld.

3.4.4 The **DP** shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Construction Work, for the acts and/or omissions of the **CMAR**, any design-bid-build contractor, any **Subcontractor**, or any other persons performing any of the Construction Work.

[INSTRUCTION TO USERS OF THIS DOCUMENT: Please check with NAU Project Manager whether the DP will make weekly visits to the project or whether they will be more frequently. If more frequently, please replace "weekly" in the two places below with the word that indicates the frequency of the DP visits.]

3.4.5 The **DP** shall make weekly visits to the site, unless otherwise specified by the **Owner**, to be knowledgeable about the progress and quality of the Construction Work and to determine if the Construction Work is proceeding in accordance with the Construction Documents. On the basis of these on-site observations, the **DP** shall keep the **Owner** informed of the progress of the Construction Work and endeavor to guard the **Owner** against defects and deficiencies in the Construction Work and failure of the Construction Work to conform with the Construction Documents. Field administration and observation of the Construction Work shall include the **DP's Consultants** in the fields of architectural, structural, mechanical, electrical, site and other engineering fields. The **DP** shall require each **DP Consultant** to provide such field administration and observation as required in **Exhibit B** to the DP Agreement and incorporated herein by reference on such schedule as the **Owner** may require during the Construction Phase. Weekly progress reports, including an analysis of the quality, and progress of the Construction Work and anticipated delays, shall be submitted by the **DP** to the **Owner** during the Construction Phase. **DP** shall advise the **CMAR** of any anticipated delays reported to **Owner**. Said reports shall be based on the personal first hand observations by **DP**, its staff, and the **DP Consultants**.

3.4.6 Based on the **CMAR's** Payment Applications, the Schedule of Values, and the **DP's** site visits, the **DP** shall determine the amounts payable to the **CMAR** and shall certify progress for payments within seven (7) days after receipt of the **CMAR's** Payment Applications. Certificates for Payment will be issued only for Construction Work that has actually been performed in accordance with the Construction Documents. Within seven (7) days after receipt of the **CMAR's** Payment Applications, the **DP** shall specify in writing **DP's** reasons for withholding any Certificates for Payment, in full or in part, as set forth in **Section 3.21**. The **DP** shall also maintain a record of any types of encumbrances or claims made by **Subcontractors** and advise the **Owner** of such encumbrances or claims.

3.4.7 The **DP** shall be the initial interpreter of the requirements of the Construction Documents. The **DP** shall render written interpretations within seven (7) calendar days of receipt of any written request from the **Owner** or the **CMAR**. The interpretations shall be consistent with the intent of and reasonably inferable from the Construction Documents.

3.4.8 Within seven (7) calendar days following receipt of written notice of a claim or controversy between the **Owner** and the **CMAR** relating to the Construction Documents, the **DP** shall either request additional information from the **Owner** and/or **CMAR** regarding their position on the claim or issue an initial written determination. If the **DP** requests additional information as set forth herein, the **DP** shall issue an initial written determination within seven (7) calendar days after the **DP** receipt of such information.

3.4.9 The **DP** shall review and approve Submittals, Shop Drawings, Product Data, Samples, and other required submissions of the **CMAR**. Such submissions shall be approved only if they are in conformance with the design concept of the Project and in full compliance with Construction Documents. Submissions of **CMAR** shall be acted on and returned to **CMAR** within ten (10) days of receipt. For complex submittals, the **DP** will have two ten (10) day review cycles. If review and approval are not timely, the **DP** shall notify the **CMAR** or **CMAR** and the **Owner** in writing stating the reason for the delay. Resubmittal shall be acted on and returned to the **CMAR** within ten (10) days, except on complex submittals with significant deficiencies, wherein the submittal turnaround time shall be two ten (10) day review cycles. The **DP's** approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.

3.4.10 The **DP** shall review and analyze all requests for Change Orders including any documents offered to substantiate such requests. The **DP** shall fully evaluate the merit and requested costs related to each Change Order request, submit timely written recommendations to the **Owner**, assist the **Owner** in negotiations and prepare and issue those Change Orders approved by the **Owner**.

3.4.11 The **DP** shall assure that no changes in the Construction Documents are made by any person without prior written consent of the **Owner**. The **DP** may approve and direct minor changes in the Construction Documents not affecting the Project value, the Contract Time(s), or the GMP or, if the **Owner** has terminated the **CMAR** and elected to proceed on a design-bid-build basis, the Contract Price, but shall inform the **Owner** in writing in advance of such approvals or directions.

3.4.12 The **DP** and the **Owner** shall each have the authority to reject Construction Work which, in their respective opinion, does not conform to the Construction Documents or the other CMAR Construction Contract Documents, including applicable codes, statutes, or local or national standards, and shall notify each other and **CMAR** of the reasons for rejection. The **DP** and the **Owner** shall each have the authority to require special inspection or testing but will take such action only after consultation with the other. The **DP** has authority to direct the **CMAR** to uncover portions of the Construction Work, as provided in **Section 3.8.7**.

3.4.13 If the **CMAR** refuses or fails to prosecute the Construction Work, or any part thereof, with such diligence as will ensure its completion within the Contract Time(s) or any extension thereof, or fails to complete the Construction Work within the Contract Time(s), or refuses to correct defective Construction Work or Construction Work that does not conform to the Construction Documents and the other CMAR Construction Contract Documents, the **DP** shall immediately notify the **Owner** upon the **DP** becoming aware of the situation and the **DP** shall consult with the **Owner** to resolve design issues, if any, involved in the situation.

3.4.14 Upon notification by the **Owner**, the **DP** shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall receive, review, certify for correctness, and completeness, and transmit to the **Owner** all manuals, warranties, "as-built" drawings, "as-built" schedules, spares, and other items to be furnished by the **CMAR** under the Contract Documents, and issue the Certificate for Final Payment.

3.4.15 Prior to Final Payment to the **CMAR**, the **DP** shall review all outstanding claims which have not been settled and shall prepare a written report outlining the background and status of such claims, including, without limitation, the details of **DP's** analysis to date and the **DP's** recommendations as to the ultimate disposition of each claim.

3.4.16 The **DP** shall perform all other responsibilities necessary to carry out the general intent and specific provisions of the DP Contract Documents and to fulfill the **DP's** role under the DP Contract Documents, or to obtain the full compliance by the **CMAR** with the CMAR Construction Contract Documents.

3.4.17 If the **Owner** furnishes keys to the **DP** to provide access to **Owner's** property, the **DP** shall assure that no such keys are duplicated, and shall return all such keys upon request of the **Owner** or prior to receipt of final payment, whichever is earlier. If the **DP** fails to return all keys furnished to it, the **DP** shall be responsible for and shall pay all costs (including materials and labor of **Owner's** personnel or others) associated with rekeying (removal of tumblers and insertion of new tumblers) or replacement of old locks which could be opened with keys furnished to the **DP**, and the parties agree that such cost may be deducted in full or in part from any funds remaining to be paid under the terms of the DP Contract Documents or any other amounts due by **Owner** to **DP**, with any balance due immediately from the **DP** to the **Owner**.

3.5 CMAR Miscellaneous

3.5.1 Some of **CMAR's** Construction Phase activities and obligations and some of the terms and conditions applicable to **CMAR** during the Construction Phase are located in other provisions of this Operating Manual and in the other CMAR Construction Contract Documents. The activities, obligations, terms and conditions can be located by looking for the term, **CMAR**, in bold.

3.5.2 During the Construction Phase, the **CMAR** shall complete the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents in return for payment by **Owner** of the Actual Costs of Construction Work, provided that in no event shall the aggregate payments by Owner to CMAR for Construction Work exceed the Guaranteed Maximum Price. All Savings will be allocated to the **Owner**, and **CMAR** will receive none of the Savings.

3.5.3 Unless otherwise provided in the CMAR Construction Contract Documents to be the responsibility of **Owner** or a separate contractor, **CMAR's** Construction Phase services shall include, without limitation: team management and coordination, scheduling, cost controls and change order management, submittal

process management, subcontracting, field management, safety program, close-out process, and warranty period services. This shall include providing through itself or its **Subcontractors** all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit **CMAR** to complete all Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents.

3.5.4 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Construction Documents and the other CMAR Construction Contract Documents.

3.5.4 The **CMAR** shall provide **Owner** and **Design Professional**, on a monthly basis, a written status report detailing the progress of the Construction Work during the Construction Phase, including whether the Work is proceeding according to schedule. Each report during the Construction Phase shall include: An updated Critical Path Method (CPM) master schedule; an updated Construction Work cash flow projection for the duration of the Project; copies of the **CMAR's** Superintendent's daily site reports made during the preceding month; identification of discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution; identification of any health and safety issues that have arisen in connection with the Construction Work; and identification of other items that require resolution so as not to jeopardize **CMAR's** ability to complete the Construction Work for the Guaranteed Maximum Price and within the Contract Time(s).

3.5.5 During the Construction Phase, **CMAR** shall maintain the (CPM) master schedule and shall promptly prepare a proposed updated (CPM) master schedule and submit it to **DP** and **Owner** for their review and approval whenever events occur or are likely to occur that require changes in the (CPM) master schedule. The (CPM) master schedule for the Construction Phase is the same and a continuation of the (CPM) master schedule used for the Design Phase and shall indicate the dates for the start and completion of the various stages of the Construction Work, including the dates when **Owner** information and approvals are required and all necessary shutdowns or suspensions of **Owner** or separate vendor activities on the Site (if any).

3.5.6 The **CMAR** shall provide leadership to the **CMAR** and **Subcontractors** during the Construction Phase for all matters relating to the Construction Work. The **CMAR** agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the Construction Work in an expeditious and economical manner.

3.5.7 The **CMAR's Representative** and the **CMAR Superintendent** shall be at the Site at all times when Construction Work is being performed and shall have the necessary expertise and experience required to supervise the Construction Work. **CMAR's Representative** shall communicate regularly with **Owner** and **DP** and shall be vested with the authority to act on behalf of **CMAR**. **CMAR's Representative** and **CMAR's Superintendent** may only be replaced with the mutual written agreement of **Owner** and **CMAR**. Notwithstanding the foregoing, the **CMAR's Representative** and **CMAR's Superintendent** will be replaced upon reasonable request of the **Owner**.

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

3.5.8 CMAR is fully responsible for its **Subcontractors'** work and any acts and omissions in connection with the performance of its **Subcontractor's** work. Nothing in the CMAR Construction Contract Documents is intended or shall be deemed to create any legal or contractual relationship between **Owner** and a **Subcontractor**. In addition, nothing in the CMAR Construction Contract Documents is intended or shall be deemed to create any third-party beneficiary rights.

3.5.9 CMAR is responsible for coordinating the activities of all **Subcontractors**.

3.5.10 If **Owner** is performing other work with separate contractors under its control as part of the Project or as a separate project, **CMAR** agrees to cooperate and coordinate its Construction Work with the work of

Owner's separate contractors so that the Project and any separate project(s) on which the separate contractors are working can be completed in an orderly and coordinated manner reasonably free of significant disruption to any party. In this regard:

(i) The **Owner** reserves the right to award other contracts related to the Project, or to perform certain work itself. The **Owner** also reserves the right to award other contracts unrelated to the Project but involving work in the vicinity of the Project or to perform unrelated work itself. Such other work may or may not be known to the **Owner** or disclosed to the **CMAR** prior to the date of the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents. The **CMAR** shall afford the **Owner** and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly coordinate its Construction Work with theirs in such manner as the **Owner Representative** may direct. The **CMAR** shall also assure at its own cost reasonable access of other contractors to the Site and their work.

(ii) Upon request of the **CMAR**, the **Owner** will provide the **CMAR** with a copy of all plans, specifications, schedules and other data relating to other contracts or work. The **CMAR** shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the **Owner** in writing of any conflicts with the Construction Work to be performed by the **CMAR**. In no event shall such notice be given so late as to interfere with or delay the Construction Work to be performed by the **CMAR**. Failure of the **CMAR** to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the **CMAR** may have as a result of the necessity to coordinate the **CMAR's** Construction Work with other activities.

(iii) Should the **CMAR** sustain any damage through any act or omission of any other contractor, **CMAR** shall have no claim or cause of action against the **Owner** for such damage and hereby waives any such claim. The **CMAR** does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall include, but not be limited to, any reasonable delay by any such other contractors, whether due to negligence, gross negligence, inadvertence or any other cause.

(iv) Should the **CMAR** cause damage to the work or property of any other contractor or of the **Owner**, the **CMAR** shall upon receiving due notice promptly attempt to settle with such other contractor or the **Owner** by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the **Owner** on account of any damage alleged to have been caused by the **CMAR**, the **Owner** shall notify the **CMAR** who, at **Owner's** option, shall defend such proceedings or pay the costs of **Owner** defending such proceedings, and if any judgment or award against the **Owner** arises therefrom the **CMAR** shall pay or satisfy it and shall reimburse the **Owner** for all attorney's fees and court or other costs which the **Owner** has incurred.

3.5.11 CMAR shall keep the Site free from debris, trash and construction wastes to permit **CMAR** to perform its Construction Work efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage/staging areas. Upon Substantial Completion of the entire Construction Work or a portion of the Construction Work to be accepted separately by the **Owner**, **CMAR** shall remove all debris, materials, wastes, equipment, machinery and tools from the Construction Work to permit **Owner** to occupy the entire Construction Work or portion of the Construction Work for the use for which it is intended.

3.5.12 Any changes affecting previously approved Construction Work shall require prior written approval of the **Owner**.

3.6 CMAR Control of Construction Work

3.6.1 CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

3.6.2 The **CMAR** shall supervise and direct the work of its employees and **Subcontractors** and coordinate the Construction Work with the activities and responsibilities of the **Owner** and the **Design Professional** to complete the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents and within the Contract Time(s).

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

3.7 Daily Log

3.7.1 The **CMAR** shall maintain a daily log of construction activities for each calendar day during the Construction Phase, using a form approved by the **DP**, **CMAR** and **Owner**. The **CMAR** shall document all activities at the Site, including:

- (i) Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Site, and any other weather conditions which adversely affect Construction Work at the Site;
- (ii) Soil conditions which adversely affect Construction Work at the Site;
- (iii) The hours of operation by **CMAR** and individual **Subcontractor** personnel;
- (iv) The number of **CMAR** and **Subcontractor** personnel present and working at the Site, by subcontract and trade, and updated schedule activity number.
- (v) The equipment active or idle at the Site;
- (vi) A description of the Construction Work being performed at the Site by updated schedule activity number.
- (vii) Any delays, disruptions or unusual or special occurrences at the Site;
- (viii) Materials received at the Site; and
- (ix) A list of all visitors at the Site.

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

3.8 Supervision and Construction Procedures

3.8.1 The **CMAR** shall supervise and direct the Construction Work, using the **CMAR's** best skill and attention. The **CMAR** shall be solely responsible for the coordination and accomplishment of all portions of the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents.

3.8.2 The **CMAR** shall be responsible to the **Owner** for the acts and omissions of all persons included in the definitions of **CMAR** and **Subcontractor**.

3.8.3 The **CMAR** shall not be relieved from its obligation to perform the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents either by the activities or duties of the **DP** or by inspections, tests or approvals required or performed by persons other than the **CMAR**. Nothing contained in this **Section 3.8.3** shall preclude the **CMAR** from asserting any rights it may have under the CMAR Construction Contract Documents in the event of unreasonable delays to the **CMAR** in the making of any inspections, test, approvals, or other action by the **DP** upon which the **CMAR** is dependent.

3.8.4 The **CMAR** shall employ a competent Construction Superintendent who is **Owner**-approved and necessary assistants, who shall be in attendance at the Site during the progress of the Construction Work. The **CMAR** shall also employ the **CMAR** Representative and **CMAR** Senior Representative who are **Owner**-approved together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction. The superintendent and representatives shall not be changed except with the consent of the **Owner**, unless the superintendent or representative proves to be unsatisfactory to the **CMAR** or ceases to be in its employ. The superintendent and representatives shall represent the **CMAR** and all communications given to either representative shall be binding on the **CMAR**. All oral communications shall be confirmed in writing.

3.8.5 The **CMAR** shall at all times enforce strict discipline and good order among its employees and its **Subcontractors'** employees and shall not allow employment on the Construction Work of any unfit person or anyone not skilled in the task assigned to him or her.

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

3.8.7 Any Construction Work required to be observed or inspected, as applicable, by the **Design Professional** and/or the **Owner** prior to being covered, which is covered without prior observation or inspection, as applicable, or without prior consent of the **Design Professional** and the **Owner**, must be uncovered and recovered by the **CMAR**, if requested by the **Design Professional** or the **Owner**, at no cost to **Owner**, notwithstanding the provisions of **Section 3.8.8**.

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

3.9 Administration

Except where expressly provided to the contrary in the Contract Documents, the **CMAR's Representative**, the **Owner's Representative** and the **DP's Representative** shall forward all communications in writing and all documents simultaneously to the other two representative as listed below:

**Design Professional's
Representative:**

**CMAR's
Representative:**

**Owner's
Representative:**

3.10 Construction Documents

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

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

3.10.3 In the event of any conflict or ambiguity the Construction Documents shall be interpreted as being complementary, requiring a complete Project or designated portion thereof to be accepted separately by the **Owner**. Any requirement occurring in any one of the Construction Documents is as binding as though occurring in all Construction Documents. Generally, the specifications address quality, types of materials

and contractual conditions while the drawings show placement, sizes, and fabrication details of materials. In the event of any conflict in the Construction Documents, the priorities stated below shall govern:

- (i) Addenda shall govern over all other Construction Documents and subsequent addenda shall govern over prior addenda only to the extent modified.
- (ii) In case of conflict between drawings and specifications, the specifications shall govern.
- (iii) Conflicts within the drawings:
 - (A) Schedules, when identified as such, shall govern over all other portions of the drawings.
 - (B) Specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in **Item (iii)(A)** above.
 - (C) Larger scale drawings shall govern over smaller scale drawings.
 - (D) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- (iv) Conflicts within the specifications: This Operating Manual shall govern over all sections of the specifications except for specific modifications to this Operating Manual that may be stated in supplementary general conditions or addenda. No other section of the specifications shall modify this Operating Manual.
- (v) If provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- (vi) In the event of any conflict or ambiguity, the **CMAR** shall request an interpretation by the **DP** before performing the Construction Work.

3.10.4 If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "**Minor detail**" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial and shall also include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

3.11 Submittals, Drawings and Shop Drawings

3.11.1 The **CMAR** shall maintain at the Site, for the use of the **Owner** and of the **Design Professional**, one copy of all drawings, specifications, bulletins, addenda, Change Orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their modifications, if any, in good order and marked daily by the **CMAR** to record all approved changes made during construction. These shall be turned over to the **Design Professional** by the **CMAR** at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the **Owner**.

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

3.11.3 Each submittal and shop drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the shop drawings. Each series shall be numbered consecutively for ready reference and each submittal and shop drawing shall be marked with the following information:

- (i) Date of submission
- (ii) Name of Project
- (iii) Location of Project
- (iv) Branch of Construction Work (specification section)
- (v) Project number
- (vi) Name of submitting **CMAR**
- (vii) Name of **Subcontractors**
- (viii) Revision number

3.11.4 All **Subcontractor** submittals and shop drawings shall be reviewed by the **CMAR** prior to being submitted to the **Design Professional** and shall bear a written statement by the **CMAR** that the submittals and shop drawings are consistent with the Construction Documents and other CMAR Construction Contract Documents or if not totally consistent shall bear a written statement indicating all deviations from the Construction Documents and other CMAR Construction Contract Documents. Any submittals or shop drawings submitted without the statements will be returned for resubmission; the submittals or shop drawings will be considered as not having been submitted, and any delay caused thereby shall be the **CMAR's** sole responsibility. This review by **CMAR** of **Subcontractor** submittals and shop drawings shall not be construed as **CMAR** approval of the design therein except that it shall be a representation that the letter accompanying the submittal or shop drawings does indicate all deviations from the Construction Documents and other Contract Documents as required by **Section 3.11.5**.

3.11.5 The **CMAR** shall include with submittals and shop drawings, a written statement indicating all deviations from the Construction Documents and other CMAR Construction Contract Documents. Failure to so notify the **Design Professional** of such deviations will be grounds for subsequent rejection of the related Construction Work or materials. If, in the opinion of the **Design Professional**, the deviations are not acceptable, the **CMAR** must furnish the item as specified or as indicated on the drawings included in the Construction Documents and in accordance with the other CMAR Construction Contract Documents.

3.11.6 It is the **CMAR's** obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Construction Work. Submittals and shop drawings shall indicate in detail all parts of an item of Construction Work, including, without limitation, erection and setting instructions and engagements with work of other trades or other separate contractors.

3.11.7 By reviewing or submitting submittals and/or shop drawings, the **CMAR** thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each submittal and/or shop drawing with the requirements of the Construction Documents and other CMAR Construction Contract Documents. If any specified material item or part is not available, the **CMAR** shall so indicate to the **Design Professional**.

3.11.8 The **Design Professional** shall review and approve submittals and shop drawings and return them to the **CMAR** within ten (10) days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the **CMAR** must assume a ten (10) day review period for each submittal or set of shop drawings. For complex submittals, the **CMAR** must assume two ten (10) day review cycles. If review and approval are delayed beyond ten (10) days, the **Design Professional** shall notify the **CMAR** and the **Owner** in writing stating the reason for the delay. Approval shall not relieve the **CMAR** from the responsibility for deviations

from the Construction Documents or other CMAR Construction Contract Documents, unless it has been called to the **Design Professional's** attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of the **Owner** to effect an improvement in the Construction Work and does not increase the Guaranteed Maximum Price or Contract Time(s). Any such modification is subject to all other provisions of the Construction Documents and the CMAR Construction Contract Documents and is without prejudice to any and all rights under any surety bond.

3.11.9 If the **Design Professional** returns a submittal or shop drawing to the **CMAR** with the notation "rejected", "revise and resubmit", or "approved as noted", the **CMAR**, so as not to delay the Construction Work, shall promptly submit a submittal or shop drawing conforming to the requirements of the Construction Documents and other Contract Documents and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the **Design Professional**. Any other differences between the resubmittal and the prior submittal shall also be indicated on the shop drawing and on the resubmittal as a special note.

3.11.10 No extension of time will be granted to the **CMAR** because of its failure to submit submittals or shop drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Construction Work shall not commence until the **CMAR** has received written approval. The **CMAR** shall furnish prints of its approved submittals and shop drawings to all the **Subcontractors** whose work is in any way related to the Construction Work. Only prints bearing this approval will be allowed on the Site.

3.12 Product Samples, Tests and Certificates

3.12.1 The **CMAR** shall furnish product samples of all items requested or required by the specifications. Product samples shall be properly identified and submitted with such promptness as to cause no delay in Construction Work or in the work of any other contractor and to allow time for consideration by the **Design Professional** and the **Owner**. **CMAR** shall submit product samples to the **Design Professional** and/or **Owner** for review and approval in accordance with **Section 3.11** above and this **Section 3.12**.

3.12.2 Each product sample must be accompanied by a letter of transmittal containing the following information:

- (i) Date of submission
- (ii) Name of Project
- (iii) Location of Project
- (iv) Branch of Construction Work (specification section number)
- (v) Project number
- (vi) Name of submitting **CMAR**
- (vii) Name of **Subcontractor**

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

3.12.4 No tests, inspections, observations or approvals performed or given by the **Owner** or the **Design Professional** or others acting for the **Owner** or any agency of Federal, State or local government nor any acts or omissions by the **Owner** or the **Design Professional** in administering the CMAR Construction Contract Documents shall relieve the **CMAR** from its duty to perform the Construction Work in accordance with the Construction Documents, the other CMAR Construction Contract Documents and applicable law.

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

3.12.6 After delivery of materials, the **Design Professional** may make such tests, as it deems necessary, with samples required for such tests being furnished by and at the cost of the **CMAR**. Any test is for the benefit of the **Owner** and shall not relieve **CMAR** of the responsibility for providing quality control measures to assure that Construction Work strictly complies with the Construction Documents and the other **CMAR** Construction Contract Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

3.12.7 On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Construction Work, the **Design Professional** and **Owner** shall each have the right to cause their removal and replacement by items meeting Construction Document and the other **CMAR** Construction Contract Documents requirements or to demand and secure appropriate reparation to the **Owner** from the **CMAR**.

3.13 Legal Requirements

3.13.1 **CMAR** shall perform all Construction Work in accordance with all applicable Legal Requirements and shall provide all notices applicable to the Construction Work.

3.13.2 The Guaranteed Maximum Price or Contract Time(s) of performance or both shall be adjusted to compensate **CMAR** for any unforeseen changes in the Legal Requirements affecting the performance of the Construction Work.

3.14 Government Approvals and Permits

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

3.15 As-Built Drawings

3.15.1 Prior to Final Completion, the **CMAR** shall complete and turn over to the **Design Professional** the as-built drawings for review by the **Design Professional**. The as-built drawings shall consist of a set of drawings, which clearly indicate all field changes that were made to adapt to field conditions, field changes resulting from Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the as-built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The as-built drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color.

3.15.2 For any changes or corrections in the Construction Work made subsequent to Substantial Completion, such revisions shall be submitted to the **Design Professional** as part of the as-built drawings submitted under this **Section 3.15.1**.

3.16 Schedule and Coordination

3.16.1 The **CMAR** shall schedule and coordinate the work of all of the **Subcontractors** on the Project including their use of the Site. The **CMAR** shall keep the **Subcontractors** informed of the Project construction schedule to enable the **Subcontractors** to plan and perform the Construction Work properly.

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

- (i) no activity shall be longer than twenty-one (21) calendar days in length except fabrication and delivery activities:
- (ii) each activity must be logically tied to another activity to show its interdependency with other activities:
- (iii) installation activities must be logically tied to submittal/approval, fabrication and delivery:
- (iv) only a single critical path shall be designated.

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

3.16.4 The **CMAR's** schedules shall be revised monthly to reflect ACTUAL conditions in the field. A copy of the revised schedule and narrative report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed to be taken shall be submitted with each Application for Payment. The submittal of an acceptable updated CPM schedule is a condition precedent to the processing of any application for payment made by **CMAR**. **Owner's** review of the CPM schedule update shall not be construed as relieving **CMAR** of its complete and exclusive control over the means, methods, sequences, and techniques of construction. The **CMAR** understands that the updated CPM schedule will be the basis for the analysis and granting of time extensions in accordance with **Section 3.32** of this Operating Manual.

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

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

3.16.7 The parties agree that if the **CMAR** submits an original or updated schedule which shows the Project and/or individual milestone(s) completing earlier than required by the Contract Documents (the then adjusted Contract Time(s)), the differences between the forecasted early completion and the required completion shall be considered Project-owned float available for use by both the **Owner** and the **CMAR**.

3.16.8 Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Construction Work beyond the adjusted Contract Time(s). Since float time within the construction schedule is jointly owned, it is acknowledged that **Owner**-caused delays on the Project may be offset by **Owner**-caused time savings. In such an event, the **CMAR** shall not be entitled to receive a time extension or delay damages until all **Owner**-caused timesavings are exceeded and the contractual completion date or milestone date is also exceeded.

3.16.9 It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated construction schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

3.17 CMAR'S Responsibility for Project Safety

3.17.1 As among **CMAR**, **DP** and **Owner**, **CMAR** shall have sole responsibility for safety at the Construction Work Site, except that **DP** and **Owner** will have responsibility for the acts and omissions of their respective officers and employees.

3.17.2 **CMAR** recognizes the importance of performing the Construction Work in a safe manner so as to prevent damage, injury, death or loss to (i) all individuals at or in the vicinity of the Construction Work, whether working or visiting the Project or Campus; (ii) any Construction Work, including, without limitation, materials and

equipment incorporated or stored on or off Site; and (iii) all other or adjacent property, whether owned by **Owner** or other persons. As among **CMAR**, **DP** and **Owner**, **CMAR** assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Construction Work. **CMAR** shall, prior to commencing construction, designate a safety manager with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Construction Work. The safety manager shall make routine daily inspections of the Site and shall hold at least weekly safety meetings with **CMAR's** personnel and its **Subcontractors**.

3.17.3 CMAR and its **Subcontractors** shall comply with all Legal Requirements relating to safety, as well as any **Owner** specific safety requirements set forth in the CMAR Construction Contract Documents, which do not violate any applicable Legal Requirements. **CMAR** will immediately report, in writing, to **Owner's** Representative and, if required by applicable Legal Requirements, all government or quasi-government authorities having jurisdiction over matters involving the Construction Work, any injury, death, loss, damage or accident occurring at the Site. Without limiting the foregoing, **CMAR** shall, and shall cause each **Subcontractor** to, comply with worker health and safety requirements in Environmental Law and OSHA. In addition, **CMAR** shall take all reasonable necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Construction Work Site is located or in the vicinity of or passing by the Construction Work Site and shall also take all reasonable necessary and appropriate steps to protect from damage or destruction the property of Owner and other persons in any part of the facility in which the Construction Work Site is located or in the vicinity of or passing by the Construction Work Site. Among other actions in this regard **CMAR** shall comply with the requirements of the applicable fire code.

3.17.4 Please see **Section 4.1** of this Operating Manual for definitions of OSHA and Hazardous Substance. If in the course of the Construction Work, any environmental, health or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA or otherwise, then the Construction Work activities related to the concern must be discontinued until the concern is resolved. This means prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard, the Owner's Representative must be notified immediately of the concern. Construction Work shall not resume until approval has been provided by Owner. Close coordination will be maintained between Owner and CMAR so the Project schedule is impacted the least amount possible.

3.17.5 CMAR's responsibility for safety under this **Section 3.17** is not intended to in any way relieve **Subcontractors** from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, death, losses, damages or accidents resulting from their performance of the Construction Work.

3.17.6 The requirements in this **Section 3.17** supplement and are in addition to the other requirements in the Contract Documents.

3.17.7 The **CMAR** shall provide the requirements and make the assignments of responsibilities for safety precautions and programs for the Construction Work, for temporary Project facilities, and for equipment, materials and services for common use of **Subcontractors**. **CMAR** shall assure that the all of this **Section 3.17** and the applicable assignments are included in the contract between **CMAR** and each **Subcontractor**.

3.17.8 Please see **Section 4.1** of this Operating Manual for definitions of Environmental Law, Hazardous Substance and Release. The purpose of this **Section 3.17.8** is to deal with a limited number of particular conditions and requirements.

- (i) Owner Designated Limited Work Areas. **Owner** may elect to designate to **CMAR** specific limitations to the area in which **CMAR** and **Subcontractors** are to perform the Construction Work in order to prevent a Release of an existing Hazardous Substance on **Owner's** property, provided that in such event **Owner** must make **CMAR** aware of the existence of the Hazardous Substance on **Owner's** property and **Owner** must provide an area free from the Hazardous Substances sufficient for the **CMAR** and **Subcontractors** to perform the Construction Work. Whenever **Owner** does this, **CMAR** and **Subcontractors** shall carry out their actions in performing the Construction Work within the specified limited area. In addition, in performing

the Construction Work, the **CMAR** and the **Subcontractors** shall not, intentionally or accidentally or otherwise, scrape or otherwise disturb the surface of any walls, ceilings, floors or other surfaces or penetrate or otherwise access any walls, ceilings, floors, overheads or other areas adjacent to or outside the designated Construction Work area unless **CMAR** has requested and obtained written approval from the **Owner Representative**. Any question about the scope of the permitted Construction Work area must be resolved by the **Owner Representative**.

(ii) Asbestos Contamination in Owner's Utility Tunnel System.

THERE IS ASBESTOS CONTAMINATION IN OWNER'S UTILITY TUNNEL SYSTEM

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

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

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

(iv) Restriction on Use of Asbestos-Containing Materials. Except for asbestos-containing materials specifically approved by **Owner** as provided below, prior to Final Completion, the **CMAR**, must deliver to **Owner** a signed statement that "No asbestos-containing materials were used in the Construction Work". If asbestos-containing material(s) must be used either for historical restoration or performance considerations, the **CMAR** must obtain **Owner's** written approval before ordering the material. The **CMAR** will advise **Owner's Representative** and the **Design Professional** of this need. If **Owner** approves the asbestos containing material, **Owner's Representative** will communicate this in writing to **CMAR** and to **Owner's** Facilities Management and Risk Management, including the appearance and type of material, location and purpose so that it can be managed long-term without incidence.

(v) Waste Electric Light Bulbs. **Owner** voluntarily uses special handling and disposal procedures for all electric light bulbs. Accordingly, all waste electric light bulbs generated from the Construction Work must be handled by **CMAR** in the following manner. **CMAR** shall provide labor and materials for proper packaging of the waste electric light bulbs. **Owner's Representative** must approve in advance the method of packaging. The packaged waste electric light bulbs will be disposed of as Project Hazardous Waste as provided in **Section 4.2.2(iv)**.

(vi) PCBs. If polychlorinated biphenyl (PCB) containing ballasts, transformers and other electrical equipment are present in a Construction Work area, these items must be handled by **CMAR** and **Subcontractors** in the following manner. **CMAR** shall provide labor and materials for proper packaging of these waste items. The **Owner's Representative** must approve in advance the method of packaging. The packaged waste ballasts, transformers and other electrical equipment will be disposed of as Project Hazardous Waste as provided in **Section 4.2.2(iv)**.

CMAR shall check each ballast, transformer and other item of electrical equipment for labeling. If there is a label on the item stating 'No PCB's', the **CMAR** may dispose of the item as non-Hazardous Waste. Otherwise **CMAR** shall package the item as provided in this **Section 3.17.8(vi)**.

(vii) Lead-based paint. Existing building components that may be coated with lead-based paint may not be disposed of by **CMAR** as construction debris prior to being tested by **Owner**.

3.18 Site Conditions

3.18.1 Certain provisions relating to Site conditions are in **Section 3.5.2**.

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

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

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

The phrase “concealed or latent physical conditions or subsurface conditions encountered at the Site that were not known by the **CMAR**” include among other matters Hazardous Substances (defined in **Section 4** below) and archaeological conditions (described in **Section 4.2.7** below) falling within **Item (ii)** immediately above.

3.18.3 The **Design Professional** and/or the **Owner** shall within ten (10) days after receipt of notice from **CMAR**, or such other reasonable time as necessary, investigate the conditions reported by **CMAR** under **Section 3.18.2**. If the **Design Professional** and/or the **Owner** find that conditions are so materially different as to support an equitable adjustment in the proposed GMP or the Guaranteed Maximum Price in the CMAR Construction Contract or the Contract Time(s), an equitable adjustment will be accomplished by written change letter in the case of an equitable adjustment to the proposed Guaranteed Maximum Price or by Change Order in the case of an equitable adjustment to the Contract Time(s) or the Guaranteed Maximum Price in the CMAR Construction Contract. Adjustment of the proposed GMP or the GMP in the CMAR Construction Contract will be for the actual, demonstrated direct cost impact to address the unforeseen condition. Extensions of Contract Time(s) will be considered only when based upon submission of an updated CPM master schedule showing an actual unavoidable delay to the Project critical path resulting from the unforeseen condition. If the **DP** and/or the **Owner** determine that no change letter or Change Order will be issued, the Contract Time(s) will not be changed and there will be no change in, as applicable, the proposed GMP or the GMP in the CMAR Construction Contract. Regardless of the outcome, the **CMAR** shall continue with the Construction Work.

3.18.5 No claim by the **CMAR** for an increase in the proposed GMP, in the GMP in the CMAR Construction Contract or in the Contract Time(s) shall be allowed without proper advance notice and an adequate opportunity for the **Owner** to investigate.

3.19 Payment of CMAR, Financial Controls, Open Book Costs and Audit

3.19.1 The **Owner** shall make payments as provided in the CMAR Construction Contract Documents to the **CMAR** for the **CMAR's** performance of the Construction Work of the Actual Cost of Construction Work up to but not exceeding the Guaranteed Maximum Price, as such GMP may be modified as provided in the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents.

3.19.2 All Savings shall be retained by the **Owner**.

3.19.3 With respect to all Construction Work performed by the **CMAR** and its **Subcontractors** under the CMAR Construction Contract Documents, **CMAR** and each **Subcontractor** shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the **Owner**. During the performance of the Construction Work and for five (5) years after Final Payment, the **CMAR** shall retain and shall also require all **Subcontractors** to retain for review and audit, or both, by the **Owner** all correspondence, meeting minutes, memoranda,

electronic media, books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all communications, direct and indirect costs and all other matters relating to the Construction Work. Upon request by the **Owner**, a legible copy or the original of any or all such records shall be produced by the **CMAR** at any time during or after the Construction Work as the **Owner** may request. The **CMAR** shall submit to the **Owner** upon request all payrolls, reports, estimates, records and any other data concerning the Construction Work performed or to be performed or concerning materials supplied or to be supplied, as well as **Subcontractor** payment applications or invoices and such **Subcontractor's** progress payment checks. The requirements of this **Section 3.19.3** shall be included in all contracts between the **CMAR** and its **Subcontractors**. The **Owner** may exercise its rights under this **Section 3.19.3** as often as reasonably necessary in the **Owner's** sole judgment to assure the **Owner** has a complete and accurate understanding of all Project costs.

3.20 Schedule of Values

The Schedule of Values shall be used as a basis for payment as provided in **Sections 3.21** and **3.22**. If there are any changes in the Guaranteed Maximum Price, the Schedule of Values will be adjusted accordingly. **CMAR** shall provide written approval from its surety for the approved Schedule of Values to be used as a basis for monthly progress payments as provided in **Sections 3.21** and **3.22**.

3.21 Applications for Payment

3.21.1 The **CMAR** shall deliver to the **DP** and **Owner** on the last Day of each month a sworn application for payment in the format specified by **Owner**. Each application for payment (i) shall be for an amount based on the Schedule of Values and determined by the percentage of completion of the Construction Work, (ii) shall show the percentage of completion of each category of the Construction Work, (iii) shall be accompanied by an acceptable updated CPM master schedule narrative report per **Section 3.16**, and (iv) shall also be accompanied by a written accounting in a form agreed by **CMAR** and **Owner** of the Actual Cost of the Construction Work completed as of the date of the last prior request for payment. In addition, with each application for payment **CMAR** shall submit such supporting documentation as is necessary or appropriate in the reasonable judgement of **Owner** to justify all amounts paid to the **CMAR** under prior applications for payment. Provided the properly submitted and accurate application for payment and the required accompanying documents are received not later than the last Day of the month, the **Owner** shall make payment to the **CMAR** not later than fourteen (14) days after the **Owner** receives a certificate for payment issued by the **Design Professional** relating to the **CMAR's** application for payment.

3.21.2 The **Design Professional**, within seven (7) days after receipt of the application for payment, will either issue a certificate for payment to the **Owner** for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

3.22 Amount of Progress Payments

The **Owner** shall pay the amount in each **CMAR** request for payment to the extent approved for payment in the **DP's** certificate for payment, less retainage as set forth in **Section 3.23**, provided that the cumulative payment amount before retainage (i) will not exceed the aggregate amount certified by the **DP** in all of its certificates for payment and, (ii) also will not exceed the percentage of completion of the Construction Work multiplied by the Guaranteed Maximum Price (excluding items of the Guaranteed Maximum Price not subject to retainage), all as set forth in the Schedule of Values. The **CMAR** Construction Phase Fee shall be paid in accordance with the percentage of completion of the Construction Work.

3.23 Retainage

3.23.1 With respect to the **CMAR's** Design Phase Services Fee and the premiums for bonds and insurance, no retainage shall be withheld.

3.23.2 With respect all payments for the Construction Work (including, among others, the **CMAR** Construction Phase Fee), ten percent (10%) retainage shall be withheld until the Construction Work is fifty percent (50%) complete. At that point in time, the **Owner** will pay one-half (1/2) of the accumulated retainage to the **CMAR**

provided that the **Owner** has determined that the **CMAR** is making satisfactory progress on the entire Construction Work and there is no specific cause or claim relating to the Construction Work requiring a greater amount to be withheld. After that point in time, **Owner** shall retain five percent (5%) of each payment. However, if at any time the **Owner** determines, at its sole discretion, that satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all future progress payments under the CMAR Construction Contract Documents pursuant to **Owner's** determination. This is in addition to the **Owner's** right to withhold payment as defined under **Section 3.27**. The **Owner's** decision concerning satisfactory progress and the existence of specific causes or claims requiring greater retention shall be final. All retainage not withheld by **Owner** to assure payment of liquidated damages or other **Owner** claims shall be fully released within thirty (30) Days of the **DP's** issuance of a Certificate of Final Completion for the entire Construction Work provided that any retention by the **Owner** after such thirty (30) days requires a specific written finding of reasons justifying a further delay in payment and the amount will be limited to the amount **Owner** reasonably expects to incur to pay or discharge the expenses determined by the finding. Retainage will not be released upon Final Completion of individual Work Packages or of a portion of the Construction Work that **Owner** has agreed to accept separately.

3.24 Early Release of Subcontractor Retainage

If a **Subcontractor** has completed its portion of the Construction Work (including all Punch list items) pursuant to its subcontract with **CMAR**, the **CMAR** may request the **Owner** to disburse the retainage allocable to such **Subcontractor**, after delivering to **Owner** any necessary consent to such disbursement from such **Subcontractor's** surety, in a form satisfactory to the **Owner**. If the **Owner** is satisfied that the **Subcontractor's** work has been completed in accordance with the Construction Documents and the other CMAR Construction Contract Documents, the **Owner** may disburse said retainage to **CMAR** for payment to the **Subcontractor**. However, the two year warranty period with respect to the Construction Work of such **Subcontractor** shall not commence until Substantial Completion of the entire Construction Work.

3.25 Payment for On-Site and Off-Site Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Construction Work. Payment may be similarly made for materials and equipment suitably stored off the Site, conditioned upon the **CMAR** furnishing evidence to the **Owner** that (a) title to the materials and equipment will pass to the **Owner** upon payment therefore and there are no claims of third parties; (b) the materials and equipment are adequately insured for full replacement value plus delivery with the **Owner** named as an additional insured on the insurance policy; and (c) such other matters as the **Owner** may reasonably request in order to protect its interests.

[NOTE TO READERS OF THIS DOCUMENT: Please check the definition of "**Subcontractor**" in **Section 1.6**. It is broad and includes among others all suppliers, material men etc.]

3.26 Title to Construction Work

The **CMAR** warrants that title to all Construction Work covered by an application for payment shall pass to the **Owner** no later than the time of payment. The **CMAR** further warrants that upon submittal of an application for payment, all Construction Work for which applications for payment have been previously issued and payments received from the **Owner** shall be free and clear of liens, claims, security interests or encumbrances in favor of the **CMAR**, **Subcontractors**, or other persons or legal entities making a claim by reason of being a creditor of **CMAR** or any **Subcontractor**. **CMAR** shall provide conditional waivers of lien through the date of the application for payment from each **Subcontractor** of any tier with each application for payment and when requested by **Owner**. **CMAR** shall also provide with each application for payment unconditional waivers of lien through the date of the prior application for payment from each **Subcontractor** of any tier. As a condition precedent to Final Completion of the entire Construction Work or a portion of the Construction Work that the **Owner** has agreed to accept separately, the **CMAR** shall provide unconditional waivers of lien from all **Subcontractors**.

3.27 Withholding Payment.

The **Owner** may withhold payment from any application for payment to the extent necessary to protect the **Owner** from loss because of:

- (i) Unsatisfactory job progress as determined by the **Owner**.
- (ii) Disputed Construction Work or materials.
- (iii) Defective Construction Work not remedied;
- (iv) Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by **Subcontractors**.
- (v) Failure of the **CMAR** to make payment to any **Subcontractors** within seven (7) days after receipt of each progress payment.
- (vi) The **CMAR**'s failure to perform any of its contractual obligations under the CMAR Construction Contract Documents or any other agreement with the **Owner**.
- (vii) Deficiencies or claims asserted by **Owner** against **CMAR** arising from any other project.
- (viii) Damage to the **Owner** or a separate contractor caused by the fault or neglect of the **CMAR** or any **Subcontractor** to the extent not covered by insurance;
- (ix) Reasonable evidence that the entire Construction Work or portion of the Construction Work that the **Owner** has agreed to accept separately will not be Substantially Complete within the Contract Time(s) due to delay for which the CMAR is responsible, or that the unpaid balance of the Guaranteed Maximum Price will not be adequate to cover completion of the entire Construction Work and liquidated damages for any anticipated unexcused delay for which the CMAR is responsible; or
- (x) Any other reason which is in **Owner's** reasonable judgment disqualifies **CMAR** from receiving the full amount of the application for payment.

If the above basis for withholding payment is remedied, payment shall be made within fourteen (14) Days for amounts previously withheld. Prior to any withholding pursuant to this **Section 3.27**, the **Owner** shall meet with **CMAR** to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

3.28 Failure of Payment.

If the **Owner** does not pay the **CMAR** within fourteen-(14) Days after the date established herein for payment by the **Owner**, the **CMAR** may proceed as set forth in **Section 7.3** of the General Conditions.

3.29 Substantial Completion

When the **CMAR** believes the entire Construction Work or a portion thereof which the **Owner** has agreed to accept separately, is Substantially Complete, the **CMAR** shall notify the **Owner** and the **DP** and submit to the **Owner** and **DP** a comprehensive list of items to be completed or corrected relating to the entire Construction Work or the portion thereof, as applicable. Within five (5) working days of receipt of the **CMAR**'s notice and list, the **Owner** or its representatives, the **DP** and **CMAR** will jointly make an observation or inspection, as applicable, to determine whether Substantial Completion has occurred. If it is determined by the **Owner** that the entire Construction Work or a portion thereof, as applicable, is Substantially Complete, the **Owner** shall issue the Punch List and the certificate of substantial completion stating the date of Substantial Completion which shall be executed by the **Owner** or its representatives, the **DP** and the **CMAR**. The **CMAR** shall proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the **CMAR** to complete all Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents.

3.30 Final Completion, Final Payment and Conditions to Final Completion, Final Payment and Final Release of Retainage

3.30.1 Completion of all outstanding Construction Work items noted in the Punch List and other CMAR Construction Contract Documents requirements is required for **DP** and **Owner** to certify Final Completion of the entire Construction Work or a portion thereof that the **Owner** has agreed to accept separately. Requirements also include, but are not limited to, equipment operations training for **Owner**, satisfaction of the conditions precedent in **Section 3.30.2**, the **CMAR** being in compliance with the Construction Documents and the other CMAR Construction Contract Documents as to all matters relating to the Construction Work, submission to and review and approval by **DP** and **Owner** of as-built drawings and all record and close out documents as specified in **Owner's** project specifications, including but not limited to, all operating manuals, warranties, assignments of warranties from **CMAR** and **Subcontractors** and other deliverables required by the Construction Documents and the other CMAR Construction Contract Documents.

3.30.2 Neither final payment nor any final release of retainage as to the entire Construction Work or as to a portion of the Construction Work that **Owner** has agreed to accept separately shall become due until the **CMAR** submits to the **Owner** as to the entire Construction Work or the portion of the Construction Work that **Owner** has agreed to accept separately:

- (i) An affidavit that payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the Construction Work or portion thereof, as applicable, for which the **Owner** or the **Owner's** property might be responsible or encumbered (less amounts withheld by the **Owner**) have been paid or otherwise satisfied;
- (ii) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the **Owner**;
- (iii) Consent of surety to the final payment and final release of retainage;
- (iv) If required by the **Owner**, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the CMAR Construction Contract Documents;
- (v) Unconditional waivers of lien from all **Subcontractors**;
- (vi) Approval by **DP** as being accurate and complete the as-built drawings submitted by **CMAR** under **Section 3.15**; and
- (vii) A written accounting in a form agreed by **CMAR** and **Owner** of the Actual Cost of the Construction Work for the entire Construction Work or portion thereof, as applicable. All supporting documentation justifying Actual Costs of the Work paid or to be paid by **Owner** required to be delivered by **CMAR** to **Owner** under CMAR Construction Contract Documents.

3.30.3 If, after Substantial Completion of the entire Construction Work, Final Completion thereof is materially delayed through no fault of the **CMAR** or by the issuance of additional Change Orders or Change Directives by the **Owner**, the **Owner** may at its sole discretion, upon request of the **CMAR**, and without terminating the CMAR Construction Contract Documents, make payment of the balance due for that portion of the Construction Work fully and properly completed. If the remaining balance for Construction Work not fully and properly completed is less than the applicable retainage, and if bonds have been furnished, the written consent of surety to payment of the balance for that portion of the Construction Work fully and properly completed shall be submitted by the **CMAR** to the **Owner**, and such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the **CMAR** or the **Owner**.

3.30.4 Acceptance of final payment by the **CMAR** shall constitute a waiver of affirmative claims by the **CMAR**. The making of the final payment by the **Owner** shall constitute a waiver of claims by the **Owner**, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Construction Work after

final payment; (b) latent defects arising after final payment; or (c) the terms of warranties set forth in or required by the CMAR Construction Contract Documents and other rights provided under Arizona law.

3.31 Allowances

3.31.1 The **CMAR** shall include in the Guaranteed Maximum Price all allowances stated in the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the **Owner** may direct, but the **CMAR** shall not be required to employ persons or entities against which the **CMAR** makes reasonable objection. Unless otherwise provided in the Contract Documents:

- (i) Materials and equipment under an allowance shall be selected by the **Owner** within a reasonable time frame as defined in the **Owner** approved Project schedule.
- (ii) Allowances shall cover the cost to the **CMAR** of materials and equipment delivered at the Site, less applicable trade discounts. **Owner** and **CMAR** shall agree prior to preparation of the **CMAR's** first Estimate of Construction Costs whether taxes on allowances will be included in the allowances or in the taxes line item in the Estimates of Construction Costs, the proposed GMP schedule included with the Proposed CMAR Construction Contract, the CMAR Construction Contract, the GMP Schedule and the Schedule of Values;
- (iii) Allowances shall not include professional or construction fees, general conditions, bond and insurance premiums;
- (iv) Allowances shall cover **CMAR's** costs for unloading and handling at the Site, labor, installation costs and other expenses;
- (v) Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order in accordance with provisions of **Section 3.33**. If the actual costs are greater than the allowance, the amount of the Change Order shall reflect the difference between actual costs and the allowance plus the **CMAR's** fee on such difference, all as determined in accordance with **Section 3.33**.

3.32 Time

3.32.1 Both the **CMAR** and **Owner** recognize that any time limits set forth in the Contract Documents are of the essence of this Agreement. **CMAR** agrees that it will timely commence performance of the Construction Work, achieve Substantial Completion and Final Completion of the entire Construction Work and achieve, any interim milestones for Substantial Completion and Final Completion as required by the CMAR Construction Contract Documents. In addition, if the **Owner** has agreed to separately accept a portion of the Construction Work, **CMAR** agrees to achieve Substantial Completion and Final Completion of each portion by the dates agreed by **Owner** and **CMAR**.

3.32.2 It is agreed that time is of the essence of each and every portion of the CMAR Construction Contract Documents and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Where under the CMAR Construction Contract Documents additional time is allowed for the completion of any Construction Work, the new time limit fixed by such extension shall be of the essence of the CMAR Construction Contract Documents. Failure to achieve any date or time for achievement of Substantial Completion or Final Completion of the entire Construction Work or any portion of the Construction Work that the **Owner** has agreed to accept separately will result in the assessment of Liquidated Damages, as provided in **Section 4** of the CMAR Construction Contract. The per diem amount shall be paid for each and every calendar day that the **CMAR** shall be in default after the time stipulated in **Section 4** of the CMAR Construction Contract for Substantial Completion or Final Completion of the entire Construction Work or a portion of the Construction Work. The amount is fixed and agreed upon by and between the **CMAR** and **Owner** because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the **Owner** would in such event sustain. Said sums may be withheld by the **Owner** from any amounts due to the **CMAR**.

from the **Owner**, whether as the result of the CMAR Construction Documents or any other obligation between the **Owner** and the **CMAR**.

3.32.3 If **CMAR** is delayed in the performance of the Construction Work (based upon a critical path analysis of the current **Owner** accepted critical path method (CPM) schedule) due to acts, omissions, conditions, events, or circumstances beyond its reasonable control or prevention and due to no legal fault of its own or those for whom **CMAR** is responsible under the terms of the CMAR Construction Contract Documents, the time for Substantial Completion or Final Completion, as applicable, of the entire Construction Work or of any portion of the Construction Work the **Owner** has agreed to accept separately and, to the extent applicable, any interim milestones shall be extended by written Change Order for the amount of time such acts, omissions, conditions, events, or circumstances added to the time to complete the entire Construction Work, portion thereof or interim milestone, as applicable. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle **CMAR** to an extension of the Contract Time(s), include acts or omissions of **Owner**, or anyone under **Owner's** control, including separate contractors, changes ordered in the Project by **Owner**, unforeseeable Project Site conditions (as to Site Conditions only to the extent provided in **Section 3.18**), wars, floods, labor disputes, unusual delay in transportation, and unusual adverse weather conditions.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in the number of days below.]

The **CMAR** has included _____ (_____) days of weather related delays within the Contract Time(s). If the Construction Work experiences aggregate weather related delays beyond _____ (_____) days, then subject to the requirements above in this **Section 3.32** the **CMAR** shall be entitled to an extension of the Contract Time(s) as a result of such additional weather related delays and reimbursement of costs associated with the delay, including general conditions.

3.32.4 **CMAR** shall be entitled to an appropriate adjustment of its Guaranteed Maximum Price for extended construction general conditions only for delays directly caused by the actions or inactions of the **Owner**.

3.32.5 Notice of any delay in the Construction Work shall be made in writing by the **CMAR** to the **Design Professional** and **Owner** immediately but in no event later than twenty-four (24) hours after discovery of the event giving rise to the delay. The **CMAR** shall provide additional details concerning the delay in writing to the **Design Professional** and the **Owner** within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall constitute a waiver of and absolutely bar any and all later claims. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Construction Work, and potential mitigation plans. If the cause of the delay is continuing, the **CMAR** must give written notice every month at the same time it submits the updated progress narrative report to the **Design Professional**. Within fifteen (15) days after the elimination of any such delay, the **CMAR** shall submit further documentation concerning the delay and, if applicable, a formal written request covering an extension of the Contract Time(s) for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the progress schedule, including any other data demonstrating a delay in the critical path of the entire Construction Work or the portion of the Construction Work the **Owner** has agreed to accept separately or individual milestone. If the **CMAR** does not comply with the notice and documentation requirements set forth above, the claim for delay is waived and absolutely barred.

3.33 Changes to Contract Price and Time

3.33.1 Change Order

After the CMAR Construction Contract this Agreement is signed, modifications to CMAR Construction Contract Documents may only be made by a written modification executed by **Owner** and **CMAR** or by a written Change Order executed by **Owner** and **CMAR**, provided that any changes in the Contract Time(s), any changes in the scope of the Construction Work as set forth in the Construction Documents, and any changes to the Guaranteed Maximum Price set in the CMAR Construction Contract may only be made by a written Change Order executed by **Owner** and **CMAR**.

(i) By written Change Directive (defined below) at any time, the **Owner**, may make any changes within the general scope of the Construction Documents and other CMAR Construction Contract Documents, issue additional instructions, require additional or modified Construction Work or direct deletion of Construction Work. The **CMAR** shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the **Owner** and shall proceed in accordance with the procedures set forth in this **Section 3.33**. The **Owner's** right to make changes shall not invalidate the CMAR Construction Contract Documents or relieve the **CMAR** of any liability. Any requirement of notice to the surety shall be the responsibility of the **CMAR**. If the **CMAR** proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this **Section 3.33**, the **CMAR** hereby waives all rights or claims **CMAR** may have as a result of the change.

(ii) "**Change Order**" means a written instrument issued after execution of the CMAR Construction Contract signed by **Design Professional**, **Owner** and **CMAR**, stating their agreement upon all of the following:

(A) The scope of the change in the Construction Work, the Construction Documents or the other CMAR Construction Contract Documents, as applicable;

(B) The amount of the adjustment, if any, to the Guaranteed Maximum Price (including, without limitation, an Allowance within the GMP) set in the CMAR Construction Contract, as applicable; and

(C) The extent of the adjustment, if any, to the Contract Time(s) of performance set forth in the CMAR Construction Contract Documents.

(iii) All such changes in the Construction Work authorized by applicable Change Order shall be performed under the applicable conditions of the CMAR Construction Contract Documents, and **Owner**, **Design Professional**, and **CMAR** shall negotiate in good faith and as expeditiously as possible on the appropriate adjustments, as applicable. No Guaranteed Maximum Price adjustment on account of a Change Order shall include the **CMAR's** or any **Subcontractor's** profit, fee, home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder, except as allowed in **Section 3.33.4**.

3.33.2 Change Directives

(i) "**Change Directive**" is a written order prepared by the **Design Professional** and signed by **Owner**, directing a change in the Construction Work prior to agreement on adjustment of the Guaranteed Maximum Price or the Contract Time(s) or both. Upon receipt of a Change Directive, the **CMAR** shall promptly proceed with the change in the Construction Work and advise the **Owner** of the **CMAR's** agreement or disagreement with the proposed method of adjustment of the Guaranteed Maximum Price or the Contract Time(s) or both.

(ii) **Owner** and **CMAR** shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments for the change in the Construction Work, the Construction Documents and the other CMAR Construction Contract Documents in the Change Directive and such agreement shall be effective immediately and recorded by preparation and execution of an appropriate Change Order.

3.33.3 Minor Changes In The Construction Work

Design Professional may direct minor changes in the Construction Work consistent with the intent of the Construction Documents and the other CMAR Construction Contract Documents providing such changes do not involve an adjustment in the Guaranteed Maximum Price or Contract Time(s) and do not materially affect the design, quality, or performance of the Project. The **Design Professional** shall promptly inform **Owner** and the **CMAR**, in writing, of any such changes, and verify that **CMAR** has recorded such changes on the as-built documents.

3.33.4 Price, Time, Or Scope Of Work Adjustment

(i) The cost or credit to the **Owner** in a Change Order resulting from a change in the Construction Work, the Construction Documents or the other CMAR Construction Contract Documents or resulting from the

cost of items covered by an Allowance exceeding the amount of the Allowance shall be determined in one or more of the following ways:

(A) By unit prices stated in the CMAR Construction Contract Documents.

(B) By cost, as defined below, properly itemized and supported by sufficient, substantiating data to permit evaluation, plus a fee of ten percent (10%) of items (1) through (5) described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Construction Work:

(1) Cost of materials, including delivery but excluding **Subcontractor**-supplied materials.

(2) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by **CMAR**, and worker's or workman's compensation insurance, but excluding **Subcontractor's** labor.

(3) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Construction Work. For owned equipment, **CMAR** must prove reasonable rental rate pursuant to actual **Ownership** costs.

(4) Cost of Subcontracted work calculated as above and **Subcontractor's** Field Supervision calculated in accordance with paragraph (5) below, plus **Subcontractor's** insurance and bond premiums as applicable. Insurance and bond premium cost shall not exceed a total of two percent (2%) of **Subcontractor's** documented cost.

(5) **CMAR's** Field Supervision not to exceed five percent (5%) of (1), (2) and (4) above; the parties agree that this mark-up shall fully cover all **CMAR** Field Supervision overhead.

(6) **CMAR's** insurance and bond premiums not to exceed a total of two percent (2%), or documented cost.

(7) All applicable sales tax.

(8) If this method of cost or credit calculation is selected, in no event shall the combined total fee including all levels or tiers of **Subcontractors** exceed twenty percent (20%) of the total direct cost of paragraphs (1), (2), (3) and (4). Field Supervision is to be excluded at all levels for the purposes of the limit imposed by this paragraph.

(C) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum shall not exceed that amount calculated under **Section 3.33.4(i)(B)** above.

(ii) Any dispute regarding the pricing methodology or cost of a change shall not relieve the **CMAR** from proceeding with the change as directed by the **Owner**. The cost or credit to the **Owner** shall be determined by the **Owner** or its representatives on the basis of **Section 3.33.4(i)**.

(iii) An **Owner**-approved written Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the **CMAR** for inclusion in the Change Order is irrevocably waived.

(iv) If **Owner** and the **CMAR** disagree upon whether **CMAR** is entitled to be paid for any services required by **Owner**, or in the event of any other disagreements over the scope of the Construction Work, the Construction Documents or the other CMAR Construction Contract Documents or proposed changes to the Construction Work, the Construction Documents or the other CMAR Construction Contract Documents or Contract Time(s), **Owner** and **CMAR** agree to resolve the disagreement consistent with this **Section 3.33** and **Article 6** of the General Conditions. As part of the negotiation process, **CMAR** shall furnish **Owner** and **Design Professional** with a good faith estimate of the costs to perform the disputed services in accordance with **Owner's** interpretations. If the parties are unable to agree and **Owner** requests **CMAR** to perform the

services in accordance with **Owner's** or **Design Professional's** interpretations of the Construction Documents and the other CMAR Construction Contract Documents, **CMAR** shall proceed to perform the disputed services, conditioned upon **Owner** issuing a written order to **CMAR** directing **CMAR** to proceed and specifying **Owner's** or **Design Professional's** interpretation of the services that are to be performed.

3.34 **Emergencies**

In any emergency affecting the safety of persons or property, **CMAR** shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Guaranteed Maximum Price or Contract Time(s) or both on account of emergency work shall be determined as provided in **Section 3.33**.

SECTION 4 ENVIRONMENTAL MATTERS, SAFETY MATTERS AND ARCHAEOLOGICAL MATTERS

4.1 **Definitions** The following terms will have their respective designated meanings:

"Environmental Law" means any and all laws, ordinances, regulations, rules and administrative and court decisions (federal, state and local) now or hereafter in effect and as in effect from time to time and as amended from time to time pertaining to environmental conditions or to protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. Section 2601, et seq.); the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. Section 11001 et seq.); the Clean Air Act (42 U.S.C. Section 7401, et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.); the Oil Pollution Act (33 U.S.C. Section 2701 et seq.); the Arizona Environmental Quality Act (Arizona Revised Statutes ("A.R.S.") Section 49-101, et seq.); the Arizona Underground Storage Tank Act (A.R.S. Section 49-1001, et seq.); the Arizona Water Quality Assurance Revolving Fund Act (A.R.S. Section 49-281, et seq.) and any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

"Hazardous Substance" means any of the following:

- (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde;
- (ii) any material, substance or waste now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "extremely hazardous substances," "restricted hazardous wastes," "toxic substances," "regulated substances," "solid wastes," "pollutant," or "contaminant" or words of similar import in any Environmental Law;
- (iii) any other material, substance or waste now or hereafter classified or regulated as "hazardous" or "toxic" under any Environmental Law;
- (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as "**hazardous**" (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and
- (v) any Hazardous Waste.

"Hazardous Waste" means "**hazardous waste**", as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time (including,

without limitation, any such waste resulting from removal of, demolition of, modifications of or additions to part or all of any existing structure, facility or equipment).

“CMAR Hazardous Waste” means any Hazardous Waste arising during or from the Construction Work that is generated by the acts or omissions of CMAR or a Subcontractor (including, without limitation, a CMAR Release) and that is not Owner Hazardous Waste.

“Owner Hazardous Waste” means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on Owner’s property or otherwise present on Owner’s property at commencement of the Construction Work, and (ii) that has become Hazardous Waste due to any part of the Construction Work. However, Owner Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any CMAR Release.

“Project Hazardous Waste” means any Hazardous Waste arising on Owner’s property from the Construction Work (including, without limitation, CMAR Hazardous Waste and Owner Hazardous Waste), regardless of:

- (i) whether generated by the acts or omissions of Owner, CMAR or a Subcontractor;
- (ii) whether it consists of Hazardous Substances that were on or in Owner’s property at commencement of the Construction Work and that have become Hazardous Waste in the course of the Construction Work; and
- (iii) whether it consists of Hazardous Substances that are brought on to Owner’s property for or during the Construction Work by CMAR or a Subcontractor and that have become Hazardous Waste in the course of the Construction Work.

“OSHA” means the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time.

“Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event.

“CMAR Release” means any Release of a Hazardous Substance on Owner’s property during the Construction Work arising from acts or omissions of CMAR or any Subcontractor, provided that this will include a Release of a Hazardous Substance pre-existing on Owner’s property only if the conditions in item (a) or item (b) below are satisfied:

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

4.2 CMAR Environmental Matters, OSHA Matters and Archaeological Matters

4.2.1 CMAR shall provide or cause to be provided a copy of the definitions in **Section 4.1** and of **Section 4.2** to each **Subcontractor** participating in the Construction Work.

4.2.2 General Requirements

(i) Compliance with Environmental Law and OSHA. **CMAR** shall comply with, and shall cause all **Subcontractors** to comply with, this **Section 4.2** and with all Environmental Law and OSHA applicable to (A) **CMAR**, (B) **Subcontractors**, (C) the Construction Work and (D) all of their activities in respect of the Construction Work.

(ii) Hazardous Substances and Hazardous Waste

(A) Hazardous Substances may be transported to and from and stored, used and be present on **Owner's** property in such quantities as are generally recognized to be usual and customary for performance of the Construction Work.

(B) Hazardous Waste may be generated on **Owner's** property of such kinds and in such quantities as are generally recognized to be usual and customary in connection with performance of the Construction Work. Hazardous Waste so generated may be stored temporarily on **Owner's** property.

(C) Prior to Final Completion of the Work, **CMAR** shall remove or cause to be removed from **Owner's** property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (but not Project Hazardous Waste) brought onto **Owner's** property during the Construction Work or used in connection with the Construction Work. As provided below, **Owner** will dispose of Project Hazardous Waste.

(D) Other than as provided in (A), (B) and (C), **CMAR** shall not, and **CMAR** shall cause all **Subcontractors** to not, dispose of, generate, manufacture, process, produce, Release, treat or otherwise store, use or have in or on or transport to or from **Owner's** property any Hazardous Substance or any Hazardous Waste

(iii) Releases of Hazardous Substances. Upon any Release of any Hazardous Substance in connection with the Construction Work, whether relating to a pre-existing condition on **Owner's** property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of **CMAR** or a **Subcontractor**, **CMAR** shall take any immediate action reasonably necessary to contain the Release, and if the Release is not a CMAR Release, **Owner** will pay to **CMAR** the reasonable costs incurred by **CMAR** in taking such reasonably necessary immediate action necessary to contain the Release. **Owner** may elect to have **CMAR** control and carry out any containment, clean-up, removal and remediation activity as to a Release, provided that, if the Release is not a CMAR Release, **Owner** will pay **CMAR** for performing such activity and **CMAR** will not be obligated to begin performing the activity until **CMAR** and **Owner** have agreed in writing on the tasks to be performed by **CMAR** and the amount to be paid to **CMAR** for performing the activity. Alternatively, **Owner** shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, **CMAR** shall absorb, without reimbursement from **Owner**, all costs and expense incurred by **CMAR** in connection with any CMAR Release. In addition, **CMAR** shall pay or reimburse **Owner** for all costs and expenses incurred by **Owner** relating to any CMAR Release. If the amount is not paid promptly, **Owner** may offset the amount due against any amount payable by **Owner** to **CMAR** under the CMAR Construction Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any Release shall be in full compliance with Environmental Law and OSHA and shall be subject to **Owner's** approval. In addition, **Owner** may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of **Owner** to permit human use and habitation of **Owner's** property and to permit use of **Owner's** property as a public university, and (B) as reasonably consistent in the judgment of **Owner** with such habitation and uses.

(iv) Project Hazardous Waste. **Owner** will arrange for handling, storage and disposal of any Project Hazardous Waste. **CMAR** will advise **Owner** promptly of the creation or generation of any Project Hazardous Waste. On an interim basis until **Owner** can make arrangements, **CMAR** shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA. **CMAR** shall pay all of **Owner's** expenses of storing, handling and disposing of **CMAR** Hazardous Waste. **Owner** will deliver a statement to **CMAR** showing **Owner's** expenses, and **CMAR** will promptly pay such amount to **Owner**. If the amount is not paid promptly, **Owner** may offset the amount due against any amount payable by **Owner** to **CMAR** under the **CMAR** Contract Documents or otherwise.

4.2.3 Notifications to Owner. **CMAR** shall notify the **Owner's** Representative immediately upon occurrence of any of the following:

- (i) any discovery by **CMAR** or any **Subcontractor** of any Hazardous Substance in any existing structure,

facility or equipment on **Owner's** property.

(ii) any Release of any Hazardous Substance on **Owner's** property in connection with the Construction Work;

(iii) the creation or generation of any Hazardous Waste resulting from the Construction Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment);

(iv) the need for any remediation or removal of any Hazardous Substance or Hazardous Waste relating to the Construction Work whether relating to a pre-existing condition on **Owner's** property or to acts or omissions of **CMAR** or any **Subcontractor**; or

(v) any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Construction Work.

Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, **CMAR** shall not take any action as to any matter in (i), (ii), (iii), (iv) or (v) without the prior written approval of **Owner**, and **Owner** shall have the right to elect to control and carry out any such action or matter.

4.2.4 Archaeological Conditions. If in the course of performing the Construction Work, the **CMAR**, any **Subcontractor** or any of their employees or other persons performing any of the Construction Work encounters any native American burial site or any archaeological artifacts, the **CMAR** shall immediately and before such burial site or artifacts are disturbed notify **Owner's Representative** and suspend any activity of the Construction Work that might disturb the burial site or artifacts. The **Owner** will evaluate the situation and will decide what action, if any, needs to be taken.

4.3 Design Professional Environmental, OSHA and Work Site Safety Requirements

4.3.1 Asbestos Contamination in Owner's Utility Tunnel System

THERE IS ASBESTOS CONTAMINATION IN OWNER'S UTILITY TUNNEL SYSTEM

A Restricted Access Provision for the Utility Tunnel System is in-place due to asbestos-contamination present in the tunnel floors. Settled dusts on utility lines may also contain asbestos. Signage is located at each tunnel entrance that warns of asbestos. Asbestos is classified as a known human carcinogen and OSHA regulations are in-place to limit employees' exposure to airborne asbestos fibers. **DP** is responsible for compliance with all Environmental Law and OSHA requirements relating to exposure of **DP's** and its Consultant's employees and other personnel to this asbestos.

4.3.2 Existing Hazardous Substances, Health and Other Safety Concerns by DP and DP Consultants. If in the course of performing **DP's** obligations, any environmental, health or safety concern exists or arises regarding Hazardous Substances or OSHA, then the activities related to the concern must be discontinued prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard. **Owner's Representative** must be notified immediately of the concern. Activities by **DP** and **DP Consultants** shall not resume until approval has been provided by **Owner**. Close coordination will be maintained between **Owner** and **DP** so the Project schedule is impacted the least amount possible.

4.3.3 Construction Site Safety Requirements and Additional Scope of DP General Indemnity. As between **DP** and **Owner**, **DP** shall have sole responsibility and liability for safety of the employees and other personnel of **DP** and **DP Consultants**. Among other actions in this regard, **DP** shall, and shall cause each **DP Consultant** to, comply with worker health and safety requirements in Environmental Law and OSHA.

4.3.4 Special Considerations. Without affecting the generality of the remainder of this **Section 4** and without implying that the following are the only matters of significance or are more significant than other matters, **DP**

shall comply with the following and **DP** shall cause each **DP Consultant** to do the following:

(i) Comply with all requirements of Environmental Law and OSHA concerning asbestos applicable to the activities of **DP**, **DP Consultants** and their respective officers, employees, agents and independent contractors relating to the DP Contract Documents.

(ii) Prior to Final Completion, the **DP** must deliver to **Owner** a signed statement that "No asbestos-containing materials were specified in the Construction Documents and, to the extent of the actual knowledge of the **Design Professional** and the officers and employees of the **Design Professional** that worked on the Project, no asbestos-containing material was used in the Project." However, if asbestos-containing material is approved by **Owner** in writing as provided in this subsection, the statement may contain an exception for the specific asbestos-containing material approved by **Owner**. If asbestos-containing material(s) must be used either for historical restoration or performance considerations, the **DP** must obtain **Owner's** written approval before specifying the material in the Construction Documents. The **DP** will advise **Owner's Representative** of this need. If **Owner** approves the asbestos containing material, **Owner's Representative** will communicate in writing to **DP** and to **Owner's Representative** the appearance and type of material, location and purpose so that it can be managed long-term without incidence.

4.3.5 Limit on Responsibility of DP and DP Consultants. Anything in this **Section 4** to the contrary notwithstanding, **DP** and **DP Consultants** are not obligated to or responsible for identification, remediation or disposal of any Hazardous Substances on **Owner's** property, except to the extent that **DP**, any **DP Consultant** or any employee or other personnel of **DP** or any **DP Consultant** causes the release of a Hazardous Substance on **Owner's** property.

SECTION 5. NON-DISCRIMINATION - GOVERNOR'S EXECUTIVE ORDER 99-4 (AMENDING 75-5)

In connection with the performance of work under this contract, the **DP** and the **CMAR** agree to observe Arizona Executive Order 99-4 and all applicable Arizona and Federal Law. **DP** and **CMAR** further agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap, except to the extent such discrimination is not prohibited by pertinent State or Federal law or Executive Order. In addition, the **DP** and **CMAR** agree to actively recruit in accordance with any affirmative action programs applicable to **DP** and **CMAR**, respectively. The aforesaid provisions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The **DP** and **CMAR** shall post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

The text of the Arizona Governor's Executive Order 99-4 follows:

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS.

PART I: Nondiscrimination in employment by government contractors and subcontractors. All government contracting agencies shall include in every government contract hereinafter entered into the following provisions: During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex, sexual orientation or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are religious organizations to provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization, in accordance with the requirements of **Title 41, Chapter 9, Article 4, Arizona Revised Statutes**.

Executive Order No. 75-5 prohibits all government contractors and subcontractors for discriminating against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation or national origin. Executive Order No. 75-5 further requires all government contractors and subcontractors to take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex, sexual orientation or national origin.

Arizona's Civil Rights Act, Title 41, Chapter 9, Article 4, does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon a religion when dealing with a bona fide occupational qualification reasonable necessary to the operation of the religious organization. This is consistent with the provisions of the **Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.)**. In addition, in the **Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193**, Congress provided that religious organizations are eligible for the receipt of federal funds on the same basis as other private organizations.

- B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, sexual orientation or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records and accounts by the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- E. In the event of the contractor's noncompliance with the non-discrimination clauses of the contract or with any of such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be imposed and remedies revoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.
- F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect in the subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interests of the State of Arizona.
- G. Each contractor having a contract containing the provisions prescribes in the section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and each subcontractor and shall be in such form as the Arizona Civil Rights Division may prescribe.
- H. Bidders or prospective contractors or subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of this order or any preceding similar Executive Order and in the event to submit on behalf of themselves and the proposed subcontractors compliance reports prior to, or as in initial part of negotiation of a contract.

- I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil Rights Division may prescribe; provided that, to the extent such information is within the exclusive possession of labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.
- J. The contracting agency or the Civil Rights Division shall require that the bidder or prospective contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the ground of race, color, religion, sex, sexual orientation or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Divisions may require.

PART II. Enforcement

- A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance and assistance of the Division's functions under this order. They are further directed to appoint or designate from among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation or persuasion.
- B. The Civil Rights Division may investigate the employment practices of any government contractor or subcontractor or initiate such investigation by the appropriate contracting agency or determine whether or not the contractual provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures establishment by the Civil Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency that agency shall report to the Civil Rights Division what action has been taken or its recommended with regard to such complaint.
- C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentality to cause any labor union engaged in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work or cooperate in the implementation of the purposes of this order.
- D. The Civil Rights Division or any agency, officer or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.

- F. Sanctions and Penalties. In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.
1. Contracts may be cancelled in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be condition upon a program for future compliance approved by the contracting agency or the Civil Rights Division; provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any non-complying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.
 2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order or before a contract shall be cancelled or terminated in whole or in part under this order for failure of a contractor or subcontractor to comply with the contract provisions of this order.
- G. This Executive Order shall become effective within (60) days of its issuance.

OWNER

ARIZONA BOARD OF REGENTS
on behalf of
NORTHERN ARIZONA UNIVERSITY

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Date: _____

CMAR

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Date: _____

DESIGN PROFESSIONAL

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

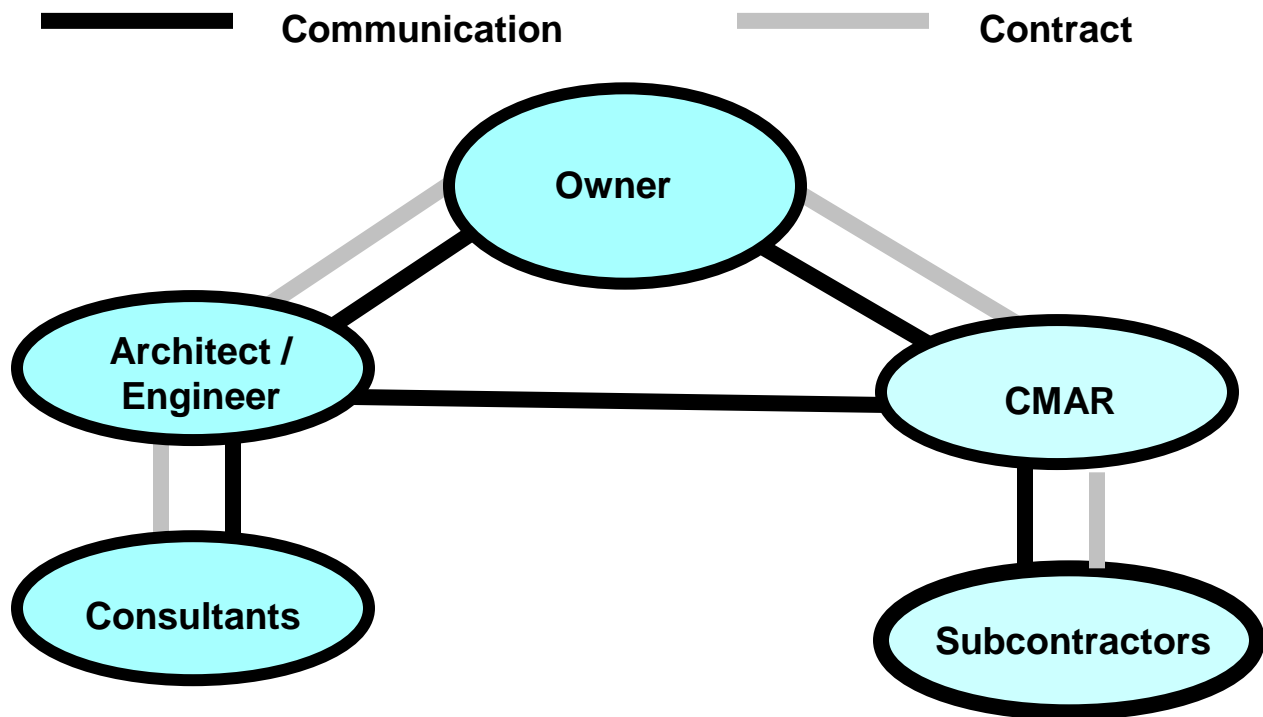
Date: _____

ATTACHMENT 1

OVERVIEW OF RELATIONSHIPS AND ACTIVITIES IN CONSTRUCTION MANAGER AT RISK PROJECT

RELATIONSHIPS

- A contract with the architect/engineer
- A separate contract with the CMAR
- CMAR, DP and Owner communicate and interact with each other in a cooperative and constructive manner



ACTIVITIES

Architect/Engineer:

- Design Phase: Performs design services with active CMAR and Owner participation
- Construction Phase: Performs some construction administration

Construction Manager at Risk

■ **Design Phase:**

- Provides Design Phase Services
- Agrees to perform the Construction Work for a Guaranteed Maximum Price on an Open Book basis
- Manages the bid process to select Subcontractors

■ **Construction Phase:** Performs the Construction Work

ATTACHMENT 2

FORM CONSTRUCTION CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

Construction Contract Between Owner and Construction Manager at Risk

Date: _____

Project Name: _____

NAU Project Number: _____

Construction Manager at Risk: _____

Owner: Arizona Board of Regents for and on behalf of Northern Arizona University

CMAR and Owner hereby agree as follows:

1. General.

1.1 The Operating Manual for Construction Manager at Risk Projects ("**Operating Manual**"), the General Conditions and the Owner's General Project Requirements are attached hereto as **Exhibits A, B and C**.

1.2 Please see the Operating Manual for definitions of several defined terms. All terms defined in the Operating Manual or in any of the other CMAR Construction Contract Documents will have the same meanings when used herein. If not specifically defined, terms, words and phrases in the CMAR Construction Contract Documents will have their ordinary and common meaning, with undefined words, phrases and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.

1.3 This agreement is the CMAR Construction Contract as defined in the Operating Manual.

1.4 The CMAR Construction Contract Documents are listed in the Operating Manual.

1.5 The CMAR Construction Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict. In the event of any inconsistency, conflict, or ambiguity, the CMAR Construction Contract Documents shall take precedence in the order in which they are listed in the definition of that term in the Operating Manual.

1.6 The CMAR Construction Contract Documents form the entire agreement between **Owner** and **CMAR** relating to the Construction Work and the CMAR performance of the Construction Work, are hereby incorporated herein by reference and by incorporation herein are as fully binding on the parties as if repeated herein. CMAR Construction Contract Documents supersede all prior discussions and negotiations. The CMAR Construction Contract Documents may be amended or modified only in writing executed by **Owner** and **CMAR**.

2. Construction Work.

2.1 The **Owner** hereby engages the **CMAR** to perform the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents. The **Owner** will perform all obligations of the **Owner** in the CMAR Construction Contract Documents. The **Owner** will comply with all terms and conditions of the CMAR Construction Contract Documents applicable to **Owner**.

2.2 The **CMAR** agrees to perform the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents. The **CMAR** will provide such construction services and will

2.3 The Guaranteed Maximum Price (GMP) for the Construction Work is : _____ Dollars (\$ _____). The GMP is all inclusive of all amounts to be paid by **Owner** for the Construction Work and includes, without limitation, all sales, franchise privilege, use, consumer and other taxes, all fees, all general conditions, all bond and insurance premiums, and all costs of complying with applicable Legal Requirements, all of which will be paid by **CMAR** without reimbursement by **Owner**.

2.5 The Schedule of Values is **Exhibit E** hereto.

2.7 The detailed CPM Schedule for the Construction Work is **Exhibit G** hereto

2.8 The **Owner** will pay the **CMAR** a fee for the Construction Phase ("**CMAR Construction Phase Fee**"). The **CMAR Construction Phase Fee** is included in the GMP and the GMP Schedule. The **CMAR Construction Phase Fee** will be _____ Dollars (\$_____). The percentage used to compute the **CMAR Construction Phase Fee** is _____ percent (_____%) of the **CMAR Construction Phase Fee Base Amount**. The "**CMAR Construction Phase Fee Base Amount**" means the sum the amounts in line items in the GMP Schedule covering Construction Work to be performed by **Subcontractors** or to be self-performed by the **CMAR**, if the **CMAR** is permitted to self-perform any Construction Work, as such amounts may be modified from time to time due to changes in the GMP.

2.9 The daily amount payable by **Owner** to **CMAR** in accordance with the CMAR Contract Documents for general conditions for agreed to Owner-caused delays in the Project is _____

3. Ownership of Documents

3.2 The **Owner** shall also own any and all Estimates of Construction Costs and other estimates and all schedules, value engineering submissions, or other work product furnished by **CMAR** or **DP** to **Owner**.

4. Contract Time

4.1 Owner and **CMAR** mutually agree that time is of the essence with respect to the dates and times set forth in the CMAR Construction Contract Documents. **CMAR** agrees that it will complete the Construction Work within the applicable Contract Times (defined below), as adjusted in accordance with the CMAR Construction Contract Documents. **CMAR** understands that the time(s) for completion(s) set forth in these documents are essential to the **Owner** and a material consideration to the **Owner** in executing this CMAR Construction Contract.

“**Contract Time(s)**” means, as to the entire Construction Work and as to any portion of the Construction Work that the **Owner** has agreed to accept separately, (I) the Date of Commencement, (II) any interim milestone dates agreed to by **Owner** and **CMAR**, (III) the time for Substantial Completion, and (IV) the time for Final Completion, as specified in this **Section 4**.

4.2 Date of Commencement. The Construction Work shall commence (hereinafter referred to as the “**Date of Commencement**”) within five (5) days of **CMAR**’s receipt of **Owner**’s notice to proceed for the entire Construction Work, for the first Work Package if the Construction Work is to be done in Work Packages or for a portion of the Construction Work if the **Owner** has agreed to accept any portion separately, unless the parties mutually agree otherwise in writing. If the Construction Work is done in Work Packages or portions, the Date of Commencement for the entire Construction Work is the Date of Commencement of the first Work Package or first portion.

4.3 Substantial Completion.

[NOTE TO USERS OF THIS DOCUMENT: In the blank below, please insert the date that is 30 days before Owner’s date for Final Completion for the Project. This allows 30 days between Substantial Completion and Final Completion]

4.3.1 Substantial Completion (defined in the Operating Manual) of the entire Construction Work shall be achieved no later than _____ subject to adjustments in accordance with the CMAR Construction Contract Documents

4.3.2 If the **Owner** has agreed to accept one or more portions of the Construction Work separately, there will be a separate Substantial Completion Date for each portion. The Substantial Completion Date for each portion will be established by the **Owner**.

4.3.3 The date for Substantial Completion of the entire Construction Work or for a portion of the Construction Work is referred to as the “**Substantial Completion Date**”.

4.3.4 To the extent specified below in this **Section 4.3.4**, interim milestones shall be achieved as follows, subject to adjustments in accordance with the CMAR Construction Contract Documents:

Part of the Work

Interim Milestone Date

[NOTE TO USERS OF THIS DOCUMENT: If there are interim milestones, fill in the information below as to each milestone. If there are no interim milestones, insert “None”.]

4.4 Final Completion. Final Completion of the entire Construction Work or portion thereof that **Owner** has agreed to accept separately shall be achieved within thirty (30) calendar days after the date established for Substantial Completion of the entire Construction Work or the portion of the Construction Work, respectively.

4.5 Requirement for Changes to Contract Time(s). Changes to Contract Time(s) may be made only by written Change Order executed by **CMAR** and **Owner**.

[NOTE TO USERS: Insert the liquidated damages amounts in paragraph below.]

4.6 Liquidated Damages. CMAR understands that if Substantial Completion of the entire Construction Work or of any portion of the Work that the **Owner** has agreed to accept separately is not attained by the applicable Substantial Completion Date provided in **Section 4.3**, as adjusted in accordance with the CMAR Construction Contract Documents (a "**Scheduled Substantial Completion Date**"), **Owner** will suffer damages, which are difficult to specify accurately and ascertain. CMAR agrees that if Substantial Completion of the entire Construction Work or of any portion of the Construction Work that the **Owner** has agreed to accept separately is not attained by the respective Scheduled Substantial Completion Date, CMAR shall pay **Owner** _____ dollars (\$ _____) as liquidated damages for each calendar day that Substantial Completion of the entire Construction Work or the portion of the Construction Work that the **Owner** has agreed to accept separately extends beyond the respective Scheduled Substantial Completion Date. In addition, if Final Completion of the entire Construction Work or of any portion of the Construction Work that the **Owner** has agreed to accept separately is not attained within the time period prescribed by **Section 4.4**, CMAR shall pay **Owner** _____ Dollars (\$ _____) as liquidated damages for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by **Owner** which are occasioned by any delay in achieving Substantial Completion or Final Completion or both of the entire Construction Work or of any portion of the Construction Work that the **Owner** has agreed to accept separately on or after the respective established date.

[NOTE TO USERS OF THIS DOCUMENT: If liquidated damages are to be applicable to any interim milestone dates set forth in Section 4.3.4, this Section 4.5 will need to be modified accordingly.]

[NOTE TO USERS OF THIS DOCUMENT: Insert the applicable version of Section 4.7 and delete the other version.]

4.7 The **Owner** has determined that the design and construction of the Project will not be divided into Work Packages. Accordingly, the provisions in the Contract Documents relating to Work Packages do not apply.

[OR]

4.7 The **Owner** has determined that the design and construction of the Project will be divided into Work Packages. The provisions on "**Work Packages**" in **Section 2.13** of the Operating Manual apply.

5. Record Keeping and Financial Controls. With respect to all Construction Work performed by **CMAR** and its **Subcontractors**, **CMAR** and its **Subcontractors** shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the **Owner**. During performance of the Construction Work and for five (5) years after final payment for the entire Construction Work, the **CMAR** shall retain and shall also require all **Subcontractors** to retain for review and/or audit by the **Owner** all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Construction Work. Upon request by the **Owner**, a legible copy or the original of any or all such records shall be produced by the **CMAR** at any time during or after the Construction Work as the **Owner** may request. The **CMAR** shall submit to the **Owner** upon request all payrolls, reports, estimates, records and any other data concerning Construction Work performed or to be performed and concerning materials supplied or to be supplied, as well as **Subcontractor** payment applications or invoices and such **Subcontractor's** progress payment checks. The requirements of this **Section 5.0** shall be included in all contracts between the **CMAR** and its **Subcontractors**.

6. Termination and Suspension. The rights of **Owner** and the **CMAR** to terminate and suspend this CMAR Construction Contract are in **Article 7** of the General Conditions. Among other rights, the **Owner** has the right to terminate or suspend this CMAR Construction Contract for convenience.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in the blanks below.]

7. Representatives of the Parties.

7.1 Owner's Representatives.

7.1.1 Owner designates _____
(Name, address and title)
as its Senior Representative ("**Owner's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 6.2** of the General Conditions.

7.1.2 Owner designates _____
(Name, address and title)
as it's representative ("**Owner's Representative**" or "**OR**"), which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

7.2 CMAR's Representatives.

7.2.1 CMAR designates _____
(Name, address and title)
as its Senior Representative ("**CMAR's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 6.2** of the General Conditions.

7.2.2 CMAR designates _____
(Name, address and title)
as its representative ("**CMAR's Representative**") which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

7.2.3 CMAR designates _____
(Name, address and title)
as its construction superintendent ("**Construction Superintendent**"), which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

7.2.4 CMAR's representatives and Construction Superintendent, as approved by the **Owner**, shall not be replaced without the **Owner's** prior written approval.

8. Bonds and Insurance.

8.1 Insurance. **CMAR** shall procure the insurance coverages required by **Article 4** of the General Conditions. Insurance certificates shall be submitted to **Owner** at the times specified in **Section 4.5** of the General Conditions.

8.2 Bonds. **CMAR** shall provide performance and payment bonds as provided in **Section 4.1** of the General Conditions. The bonds shall be in the forms in **Exhibit A** to the General Conditions.

9. Other Provisions.

9.1 Any **Subcontractors** submitted and approved as pre-qualified by **Owner**, any **Subcontractors** selected by bidding, and any Early Selected Subcontractors shall not be replaced without the **Owner's** prior written approval. Any additional costs due to an approved change of **Subcontractor** without a change in the scope of Project or a change in the Construction Documents shall be the **CMAR's** responsibility and shall not be the **Owner's** responsibility and will not increase the Guaranteed Maximum Price or extent the Contract Time(s).

9.2 CMAR represents that it has the necessary financial resources to fulfill its obligations under the CMAR Construction Contract Documents and has the necessary corporate approvals to execute the CMAR Construction Documents and perform the Construction Work

10. Additional Approvals of Arizona Board of Regents and Others. The Project has been given an initial approval by the Arizona Board of Regents ("**ABOR**"). This approval permits the Owner to proceed through a portion of the design phase of the Project. A second ABOR approval will be required to authorize completion of the design phase. A third ABOR approval is required before Owner may legally obligate itself to construct and pay for the construction of the Project. In addition to the ABOR approvals, approvals by legislative bodies or others may also be required. Anything in the CMAR Construction Contract Documents to the contrary

notwithstanding, any obligation of Owner under the CMAR Construction Contract Documents to complete the design phase and to construct and pay for construction of the Project is subject to Owner obtaining the above-described approvals.

The GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, and the CPM Schedule attached hereto are intended to supplement and not to modify or change any of the other CMAR Construction Contract Documents. Nothing in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, and the CPM Schedule attached hereto shall or shall be construed to replace or supersede any other provision of any of the other CMAR Construction Contract Documents. If there is a conflict between anything in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule attached hereto and any provision of any other CMAR Construction Contract Document, the provision of the other CMAR Construction Contract Document shall be given effect and the conflicting material in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule attached hereto will not be given effect. Without affecting the generality of the foregoing:

- All costs and expenses of completing the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents and all costs and expenses of performing the CMAR’s obligations under the CMAR Construction Contract Documents during the Construction Phase are included in the Guaranteed Maximum Price, and
- Nothing in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule attached hereto shall or shall be construed to relieve CMAR of its obligation to complete the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents or to relieve CMAR of any of its obligations under any of the other CMAR Construction Contract Documents.

CMAR

(Signature)

(Printed Name & Title)

Date Signed: _____

OWNER:

ARIZONA BOARD OF REGENTS
For and on behalf
NORTHERN ARIZONA UNIVERSITY

(Signature)

(Printed Name & Title)

Date Signed: _____

OWNER PROJECT MANAGER

Approval by Owner's Facilities Capital Program Management Group project manager:

(Signature)

(Printed Name)

Exhibit A
to
Construction Contract Between Owner and Construction Manager at Risk
Operating Manual for Construction Manager at Risk Projects

[NOTE: Attach a copy of the Operating Manual, which will be in the same form as attached to the CMAR Design Phase Services Contract]

Exhibit B
to
Construction Contract Between Owner and Construction Manager at Risk
General Conditions

[NOTE: Attach a copy of the General Conditions, which will be in the same form as attached to the CMAR Design Phase Services Contract]

Exhibit C
to
Construction Contract Between Owner and Construction Manager at Risk
Owner's General Project Requirements

[NOTE: Attach a copy of the Owner's General Project Requirements, which will be in the same form as attached to the CMAR Design Phase Services Contract]

Exhibit D
to
Construction Contract Between Owner and Construction Manager at Risk
GMP Schedule

[NOTE TO USERS: Attach the GMP Schedule]

Exhibit E
to
Construction Contract Between Owner and Construction Manager at Risk
Schedule of Values

[NOTE TO USERS: Attach the Schedule of Values]

Exhibit F
to
Construction Contract Between Owner and Construction Manager at Risk
GMP Setting Drawings, Specifications, Assumptions and Clarifications

[NOTE TO USERS: Attach the GMP Setting Drawings, Specifications, Assumptions and Clarifications]

Exhibit G
to
Construction Contract Between Owner and Construction Manager at Risk
CPM Schedule

[NOTE TO USERS: Attach the CPM Schedule]

ATTACHMENT 3

TO

OPERATING MANUAL

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

1. Reporting Period:	2. Report Number:	3. Date Submitted:
from _____ to _____	_____	_____
<hr/>		
4. Contractor Name & Address:	5. NAU Project: /Number/Signature Date:	
_____	Name: _____	
_____	Number: _____	
_____	Signature Date: _____	
<hr/>		
6. Dollar Value of Contract: _____	7. Total Payment from University: _____	
<hr/>		
8. Subcontractor and Payment:		
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
<hr/>		
9. Type Name and Title of the Individual Administering Contract: Number	Signature:	Telephone
_____	_____	() _____
<hr/>		
10. Type Name and Title of the Approving Officer	Signature:	
_____	_____	

GENERAL INSTRUCTIONS

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

- Item 2 The initial report shall be identified as Report No 1. Reports shall be consecutively numbered.
- Item 3 Date report is completed.
- Item 4 Enter information on contractor submitting report.
- Item 5 Enter information on the project.
- Item 6 Enter the estimated dollar value of the contract. Modify for changes as they occur.
- Item 7 Enter cumulative payments received from NAU.
- Item 8 Enter name and address of Subcontractor and cumulative payments received.
- Item 9 Enter name and title of company individual responsible for administering contract. Signature and telephone number required.
- Item 10 The approving officer shall be the senior official of the company responsible for contract performance

NOTE: SUBMIT REPORT TO THE BUYER IN PURCHASING