OWNER-CMAR AGREEMENT FOR CONSTRUCTION

THIS CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES AGREEMENT (the "Contract") is made and entered into as of _____, 2014 between the City of Las Vegas (the "Owner"), a municipal corporation of the State of Nevada, and Sletten Construction of Nevada, a Corporation organized and existing under the laws of the State of Nevada and authorized to do business in the State of Nevada (the "Construction Manager at Risk" or "CMAR"). The City and the CMAR are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the Owner intends to construct Detention and Enforcement Security System Upgrade (the "Project"); and

WHEREAS, the Owner is authorized under NRS 338.169-338.1699 to contract with a qualified CMAR for an eligible public work following the selection procedures contained therein; and

WHEREAS, the Owner and CMAR have entered into an Agreement for Construction Manager at Risk Preconstruction Services for the Project; and

WHEREAS, the Owner desires to retain a contractor to perform construction services, and the CMAR desires to provide these services hereinafter set forth below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, agree as follows:

1. PROJECT DESCRIPTION. The Project consists of the construction more fully set forth and described in the Contract Documents.

2. CONSTRUCTION COVENANT. The CMAR hereby covenants and agrees to undertake and complete the Work (defined in the Contract Documents) in a good, substantial and workmanlike manner. The CMAR further agrees to provide the materials, labor, tools, and equipment necessary to properly and expeditiously complete the Work in strict accordance with the requirements of the Contract and other Contract Documents and to accept payment of the Contract Amount, subject to any adjustments under the terms of the Contract, as complete compensation therefor (including all of the expenses, direct or indirect, incurred by the CMAR in connection therewith).

3. CONTRACT AMOUNT. For furnishing all labor, materials, equipment, tools and services and for doing everything required by this Contract and the other Contract Documents, the Owner will pay and the CMAR shall accept the Contract Price, as defined in the General Conditions, which in no event shall exceed the Guaranteed Maximum Price of $1,192,697.

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

A. Cost of the Work (excluding General Conditions)	$920,395
B. General Conditions	$179,507
C. CMAR's Fee	$56,795
D. CMAR's Contingency *	$36,000
E. Total Guaranteed Maximum Price	$1,192,697

Percentage Split of GMP Savings:	Owner	CMAR
	80%	20%

* The CMAR's contingency shall be used at the discretion of the CMAR; however, the CMAR shall notify the Owner in writing of the intent to utilize the CMAR's contingency prior to any expenditures.

Savings includes underrun of the total guaranteed maximum price, including CMAR's contingency remaining at the end of the project; however, savings does NOT include unused contract allowances in the total GMP. One hundred percent (100%) of the unused contract allowances as identified in the CMAR's proposal shall be retained by the Owner.

4. DOCUMENT INCORPORATION. The Contract consists of this three (3) page document and the following documents incorporated herein by this reference as a part hereof:

A. General Conditions, Exhibit "A" attached hereto
B. GMP Schedule of Values, Exhibit "B" attached hereto
C. Schedule of GMP Allowances and Qualifications & Clarifications, Exhibit "C" attached hereto
D. Technical Specifications and Drawings for Detention and Enforcement Security System Upgrade, Exhibit "D" attached hereto
E. Copy of Key Personnel List, Exhibit "E" attached hereto
F. Listing of Work Estimated by CMAR to Exceed 1% of Cost of Public Work, Exhibit "F" attached hereto
G. 2013-2014 Prevailing Wage Rates, Exhibit "G" attached hereto

5. COMMENCEMENT AND COMPLETION DEADLINE. Time is of the essence in the performance and completion of this Contract. The CMAR shall commence the Work on the date set by the City in the Notice to Proceed, and shall achieve Substantial Completion of the entire Work within **150 calendar days** thereafter, subject to adjustments of this Contract Time as provided in the Contract Documents.

6. LIQUIDATED DAMAGES. The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the Contract Documents. If the CMAR shall neglect, fail, or refuse to complete the Work for any reason within the time specified for Substantial Completion in the Contract plus any adjustments to the Contract Time resulting from approved Change Orders, then the CMAR does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, as follows:

Liquidated damages shall not accrue after the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall accrue at the sum of **$1,000 per calendar day** if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion.

The said amounts are fixed and agreed on by and between the CMAR and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which the Owner will sustain by failure of the CMAR to complete the Work on time, such as architectural and engineering inspection, supervision and contract administration, loss of revenue, cancellation costs for schedule performances, interest charges, delays caused to other construction activities of Owner by failure to perform this Contract, and other damages, some of which are indefinite and not susceptible of easy proof, said amount is agreed to be a reasonable estimate of the amount of damages which the Owner will sustain and said amount shall be deducted from any monies due or that may become due to the CMAR.

THIS SECTION IS INTENTIONALLY LEFT BLANK

7 NOTICES. Any notice required to be given under the Contract shall be deemed to have been given when the notice is (i) delivered personally, or (ii) sent by facsimile machine and delivered by regular mail or certified mail, addressed as follows:

To the Owner: Purchasing & Contracts Manager
City of Las Vegas
City Hall, Third Floor
495 Main Street
Las Vegas, NV 89106
Fax: (702) 384-9964

To the CMAR: Tony Ewalt
Sletten Companies
5825 South Polaris Avenue
Las Vegas, NV 89118
Fax: (702) 739-9932

Any change in the addresses stated above shall be made in writing and delivered in the manner provided herein.

IN WITNESS WHEREOF, the Owner and the CMAR have made and executed this Agreement on the day and year first above written.

CITY OF LAS VEGAS

YOLANDA C. JONES, C.P.M., CPPO
Manager, Purchasing and Contracts

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 5/2/14
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

CMAR

TONY EWALT
Vice President

EXHIBIT A - GENERAL CONDITIONS

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SECTION 1. DEFINITIONS

The following definitions shall apply to the Contract:

a) **"Addendum"** means a written change or other written instrument issued by the Owner via the City of Las Vegas Purchasing and Contracts Office that amends or otherwise changes the GMP Setting Documents prior to submission of the GMP.

b) **"Applicable Law"** means (1) any federal, state, or local law, code, or regulation; or (2) any formally adopted and generally applicable rule, requirement, determination, standard policy, implementation schedule, or other order of any governmental body having appropriate jurisdiction to the extent it relates specifically to the construction of the project and the responsibilities of the CMAR under the Contract. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein, and the Contract shall be read and enforced as though such provision were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be physically amended to make such insertion or correction. The Owner acknowledges that the respective design professionals and/or Owner, and not the CMAR, are responsible for Contract Document compliance with Applicable Law. This acknowledgement in no way limits the responsibility of the CMAR to diligently perform the Scope of Services in the Agreement for Construction Manager at Risk Preconstruction Services for the Detention and Enforcement Security System Upgrade, dated November 5, 2013, between the Owner and the CMAR.

c) **"As-Builts"** means record drawings or drawings representing the 'as-built' condition of the Work.

d) **"Certified Payroll Report"** means the record required to be compiled, maintained, and submitted by the CMAR and its Subcontractors to the Owner in compliance with NRS 338 and any other provisions of Nevada law.

e) **"Construction Change Directive"** means a written order from the Owner directing immediate changes in the Work for which a modification to the Contract Amount, Contract Time or other provision of the Contract may be appropriate but may not have been negotiated at the time of issuance. The CMAR is to proceed immediately with the implementation of the Construction Change Directive.

f) **"Change Order"** means a written order to the CMAR signed by the Owner and CMAR issued after execution of the Contract that authorizes a change in the Work, Contract Amount or Contract Time. Except as allowed by the Contract Documents, the Contract Amount or Contract Time may be changed only by the issuance of a Change Order. The execution of the Change Order indicates the CMAR's agreement to the terms set forth therein including the adjustment, if any, in the Contract Amount or Contract Time.

g) **"City"** means the City of Las Vegas, a municipal corporation of the State of Nevada.

h) **"CMAR Contingency"** means the allowance that may be utilized by the CMAR to cover certain Cost of the Work as further defined in these General Conditions.

i) **"CMAR Fee"** means the non-Project specific Overhead and Profit as further defined in Section 4 of this Contract.

j) **"CMAR General Conditions"** means the costs as further defined in Section 4 of this Contract.

k) **"Construction Manager at Risk" (CMAR)** means the Contractor with whom the Owner has entered into this Contract to perform the Work.

l) **"Construction Manager at Risk Work", "CMAR Work" or "Work"** means everything required to be furnished and done for and relating to the construction of the Project by the CMAR pursuant to this Contract. CMAR Work includes the employment and furnishing of all construction services, labor, materials, equipment, supplies, tools, scaffolding, transportation, utilities, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the CMAR's responsibility to obtain Permits, except as detailed in the Technical Specifications, procurement of equipment and materials, construction, management, coordination and related obligations with respect to the construction of the Project under this Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, and all of the CMAR's administrative, accounting, record keeping, notification and similar responsibilities of every kind whatsoever under this Contract pertaining to such

obligations. A reference to CMAR Work shall mean any part and all of the CMAR Work unless the context otherwise requires, and shall include all extra CMAR Work authorized by Change Order or Work Change Directive.

m) **"Consultant"** means the licensed Architect, Engineer or other design professional and its consultants, retained by the Owner to perform design services for the Project.

n) **"Contract"** means the Owner-CMAR Construction Agreement, which does not come into existence until executed by all parties, and all other documents incorporated therein by reference.

o) **"Contract Amount"** means the compensation to be paid the CMAR to construct the Work and is included in the "Amount of Contract" section of the Owner-CMAR Construction Agreement by the Owner.

p) **"Contract Award Date"** means the date this Contract is awarded by the Owner to the CMAR and date this Contract becomes effective.

q) **"Contract Documents"** means the Owner-CMAR Construction Agreement, General Conditions, Technical Specifications, Drawings and, if applicable, the Addenda or other Modifications made to the aforementioned documents.

r) **"Contract Time"** means the number of days set forth in the Owner-CMAR Construction Agreement for constructing the Work for achieving Substantial Completion of the Work, including the authorized extensions thereto, which commences to start with the date set forth in the Notice to Proceed.

s) **"Cost of the Work"** means the cost to construct the Work, as further defined in Section 4.05.b.1.

t) **"Critical Path"** means the path through the project schedule indicating the minimum time in which it is possible to complete the Work, and the tasks that, if delayed, will delay Substantial Completion of the Work."

u) **"Critical Path Method"** means the method of developing a network analysis system as outlined in "CPM in Construction Management" by James J. O'Brien and Freddie L. Plotnick (McGraw-Hill, Inc., 5th Edition).

v) **"Date of Substantial Completion"** means the date established and certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work, or designated portion thereof, for the use for which it is intended.

w) **"Day"** means a calendar day unless otherwise specifically designated.

x) **"Designated Representative"** means the person authorized pursuant to Section 3.01 (Designated Representative) of the Contract to act or make decisions on behalf of the Owner.

y) **"Drawings"** mean the diagrammatic representations of the requirements for construction of the Work that are incorporated as a part of the Contract.

z) **"Final Completion"** occurs on the date when the obligations of the CMAR under this Contract are complete and accepted by the Owner and final payment becomes due and payable.

aa) **"Force Majeure"** The CMAR shall be excused from performance hereunder during the time and to the extent that the CMAR is prevented from obtaining, delivering, or performing in the customary manner, by acts of God, fire, war, loss or shortage of transportation facilities, lockout or commandeering of raw materials, products, plants or facilities by the government or acts of terrorism. The CMAR shall provide the Owner evidence that nonperformance is due to other than fault or negligence of the CMAR.

bb) **"Good Construction Practices"** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good equipping, installation, construction, commissioning and testing practices for the construction and improvement of capital assets in the construction industry as followed in the southwestern region of the United States.

cc) **"Governing Body"** means the Las Vegas City Council or any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, City, commission, administration, court or other body, or any official thereof having jurisdiction.

dd) **"Guaranteed Maximum Price" or "GMP"** means the maximum amount which the Owner is obligated to pay CMAR for construction of the Project, inclusive of all costs, general conditions, and fees of CMAR in connection with the Work.

ee) **"Guaranteed Project Schedule"** means the initial schedule of the Work submitted by the CMAR and accepted by the Owner at the outset of the Project which is used as the baseline for comparing the progress of the Project. Such schedule is further described in Section 01330 of the Technical Specifications.

ff) **"GMP Setting Documents"** means the Technical Specifications and Drawings prepared by the Architect/Engineer, reviewed by the CMAR during Pre-Construction Service and utilized by the CMAR to prepare the GMP.

gg) **"Hazardous Material"** means any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up.

hh) **"Insurance Requirement"** means any rule, regulation, code, or requirement issued by any insurance company which has issued a policy of required insurance under this Contract, as in effect during this Contract, compliance with which is a condition to the effectiveness of such policy.

ii) **"Key Personnel"** means that individuals identified by CMAR in its Proposal. Each of these individuals shall be required to have, and to maintain, the appropriate training for their respective positions and shall be full time in such positions.

jj) **"Labor Commissioner"** means the person appointed and functioning pursuant to NRS Chapter 607 who is charged with enforcing the labor laws of the State of Nevada.

kk) **"Lien"** means any and every lien against the Project or against any monies due or to become due from the Owner to the CMAR under this Contract, for or on account of the Work, including mechanics', materialmen's, laborers' and lenders' liens.

ll) **"Major Change in the Work"** means changes to the Work ordered by the Owner in writing that involve adjustment to the Contract Amount or extension of the Contract Time and may be inconsistent with the Construction Documents.

mm) **"Material Notice to Proceed"** means the document issued by the Owner establishing the date the CMAR is allowed to begin ordering materials for incorporation into the Work but does not allow construction activity at the site prior to issuance of the Notice to Proceed unless otherwise agreed in writing by the Owner.

nn) **"Minor Change in the Work"** means changes to the Work ordered by the Owner in writing that do not involve adjustment to the Contract Amount or extension of the Contract Time and are not inconsistent with the Construction Documents.

oo) **"Modification"** means (i) any Addenda related to the GMP Setting Documents (ii) a written Change Order, (iii) a written interpretation, (iv) a written order issued by the Owner for a minor change in the Work, or (v) a written amendment to the Contract signed by both parties.

pp) **"Notice of Award"** is the letter issued by the Owner notifying the CMAR of the award of the Project by the City Council, authorizing the CMAR to proceed with the procurement of the bonds and insurance, and including the Owner-CMAR Agreement for execution and return to the Owner.

qq) **"Notice to Proceed"** means the document issued by the Owner that (i) establishes the date the CMAR is allowed to begin construction activity at the site, and (ii) commences the running of the Contract Time.

rr) **"Owner"** means the City of Las Vegas.

ss) **"Owner's Designated Representative"** means Owner's employee identified in Section 3.01 (Designated Representative) of the Contract.

tt) **"Permits"** means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Construction of the Project.

uu) **"Product Data"** means the illustrations, standard schedules, performance charts, instructions brochures, diagrams and other information furnished by the CMAR to illustrate a material, product or system for some portion of the Work.

vv) **"Progress Record Documents"** means the set of documents maintained by the CMAR indicating the actual as-built revisions to the Work and Contract Documents, which are further described in Section 01700 of the Technical Specifications.

ww) **"Progress Schedule"** means a version of the schedule for the Work provided by the CMAR subsequent to the Guaranteed Project Schedule, pursuant to the requirements of the Contract related to issues such as time extensions, claims, payments, tardiness and recovery.

xx) **"Project"** means the total construction of which the Work performed provided under the Contract may be the whole or a part thereof and which may include construction by the Owner or by other contractor hired by the Owner.

yy) **"Promptly"** means without delay and on time.

zz) **"Reasonable Time"** means ten (10) business days, except where otherwise specified, or unless City Council action is required.

aaa) **"RFI"** means a Request for Information initiated by the CMAR to obtain clarification or information regarding the Project.

bbb) **"Samples"** mean the physical examples that illustrate the materials, equipment or workmanship, to be used by the CMAR and that establish standards for the judgment of the Work.

ccc) **"Shop Drawings"** mean the drawings, diagrams, schedules and other data specially prepared for the Work by the CMAR or any Subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.

ddd) **"Site"** means the location of the Project where the Work is to be performed.

eee) **"State"** means the State of Nevada.

fff) **"Subcontractor"** means any individual or entity who is sublet any part of the Work by the CMAR. There is no contractual relationship between the Owner and the Subcontractor who performs work or services for the CMAR.

ggg) **"Submittal"** means the item required by the Contract Documents to be provided to the Owner for information, review, or approval as indicated. Unless otherwise specifically indicated, Submittals are not a part of the construction and do not become part of the Contract Documents. Schedules, Shop Drawings, Product Data, and Samples are typical examples of a Submittal.

hhh) **"Substantial Completion"** means the point in time when, in the opinion of the Owner, construction is sufficiently complete, in accordance with the Contract Documents, that the Owner can occupy or utilize the Work, or designated portion thereof, for the intended use of the Project. This is not necessarily final acceptance of the Project or any portion thereof. A Certificate of Substantial Completion shall be issued by the Owner establishing the Date of Substantial Completion and noting any incomplete or unacceptable portions of the Work that must be completed or corrected prior to final acceptance of the Work. The date of such Certificate shall commence the running of the warranty periods required by the Contract Documents for the completed portions of the Work, except as otherwise provided in the Contract Documents or Certificate of Substantial Completion.

iii) **"Supplier"** means an entity selected by CMAR or Subcontractor of any tier for the supply of any materials or equipment for the Project.

jjj) **"Tax"** means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition-to tax.

kkk) **"Technical Specifications"** means the written descriptions of the requirements for the Work incorporated as a part of the Contract."**Work**" Reference "Construction Manager at Risk Work" definition.

SECTION 2. CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

Section 2.01 Responsibility for the Security of the Work and Project Site

a) The CMAR is responsible at all times for the Work and for the Project site regardless of whether or not the Owner has required any insurance coverages (such as Builder Risk Insurance) which would have protected the interest of the CMAR and the Owner. The CMAR shall conduct its operations under the Contract in a manner as to avoid the risk of damage, injury, loss or theft by any means (including acts of God, vandalism or sabotage) to the Work or to the property of the CMAR, Owner or any other person. The CMAR shall promptly take such reasonable precautions, which are necessary and adequate against any and all conditions involving such risk of damage, injury, loss or theft. The CMAR shall continuously inspect the Work (including the materials and equipment used in connection therewith) to discover and determine if any such conditions exists and shall be solely responsible for correcting such conditions.

b) The CMAR shall cooperate with the Owner on all security matters and shall promptly comply with any security requirements established by the Owner. Such compliance with these security requirements shall not relieve the CMAR of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner the CMAR's obligation to undertake such reasonable action as may be required to establish and maintain secure conditions at the Work site. The CMAR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to the Owner in a timely manner.

Section 2.02 Responsibility for Protecting Adjacent Areas

a) Unless otherwise specifically provided in the Contract, the CMAR shall not perform the Work in a manner that would disrupt or otherwise interfere with the operation of any pipeline, telephone line, electric transmission line, ditch or other structure which may be on or adjacent to the Work site, or enter upon lands in their natural state until approved by the Owner. Thereafter, and before it begins the Work, the CMAR shall give due notice to the Owner of its intention to start the Work. The CMAR shall not be entitled to an increase in the Contract Time, or extra compensation on account of any postponement, interference or delay of the Work caused by such line, ditch or structure.

b) The CMAR shall preserve and protect cultivated areas and planted vegetation (such as trees, plants, shrubs and grass) on or adjacent to the Work site that the Owner has determined does not unreasonably interfere with the performance of the Work (including the operation of equipment or stockpiling of materials) and shall repair or restore any damage thereto.

Section 2.03 Responsibility for Construction Safety

a) The CMAR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CMAR shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

b) The CMAR shall take all reasonable precautions for the safety of all employees on the Work and all other persons who may be affected thereby. The CMAR shall designate a responsible member of his organization whose duty shall be the prevention of accidents.

c) Except as otherwise stated in the Contract, if the CMAR encounters any materials reasonably believed to be asbestos, lead or polychlorinated biphenyl (PCB) on the Project site, the CMAR shall immediately stop work in the area affected and give notice of the condition to the Owner. The CMAR shall not resume the Work in the affected area without written direction by the Owner.

Section 2.04 Responsibility for Clean-Up of the Work Site

The CMAR shall, at all times, keep the work area in a neat, clean and safe condition. Upon completion of any portion of the Work, the CMAR shall promptly remove all of its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of work. Upon completion of the Work and before final payment is made, the CMAR shall, at its expense, dispose of all unnecessary vegetation, structures, rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the Work to the satisfaction of the Owner in accordance with all applicable federal, state, and local laws, ordinances and codes. The CMAR shall leave the premises and Work site in a neat, clean, and safe condition. In the event of the failure to comply with the foregoing, the Owner may satisfy the requirements of this Section at the CMAR's expense.

Section 2.05 Responsibility for Construction Procedures

a) The CMAR shall supervise and direct the Work using its best skill and attention. The CMAR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

b) The CMAR shall not be relieved from its obligations to perform the Work in accordance with the Contract either by the activities or duties of the Owner in the administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the CMAR.

Section 2.06 Responsibility for Employment of Competent Project Personnel

The CMAR shall employ competent project personnel that are acceptable to the Owner to oversee various aspects of the Project. Any substitution of the personnel defined in this section is strongly discouraged and will be permitted only after a written request for such substitution has been made and approved by the Owner.

a. Project Manager. The Project Manager shall to oversee all Work on the Project. The Project Manager shall have the authority to act on the CMAR's behalf on contract-specific issues. This individual shall be present at the progress meetings, and be involved in the chain of dispute resolution, change order negotiation, schedule development, public involvement, and other project specific activities where additional CMAR oversight is required to ensure full compliance with Contract requirements. The Project Manager shall continue in that capacity for the duration of the Project, unless the Project Manager ceases to be on the CMAR's payroll or the Owner otherwise agrees to a substitution in writing.

b. Superintendent. The Superintendent shall manage all Work on the Project, including all subcontracted Work. The Superintendent shall represent the CMAR and all communications given to the Superintendent shall be as binding as if given to the CMAR. The Superintendent shall be available 24 hours a day and shall be on the construction site when there is any construction activity taking place on the Project. During day and night work schedules, the Superintendent may appoint additional deputy superintendents, as approved by the Owner.

The Superintendent shall be present at the progress meetings and be available as needed to meet with the Owner regarding the progress of the Work and related activities. Failure to maintain a Superintendent on the Project site at all times work is in progress shall be considered a material breach of this Contract, entitling the Owner to terminate the Contract or, alternatively, issue a stop Work order until the Superintendent is on Project site.

The Superintendent shall continue in that capacity for the duration of the Project, unless the Superintendent ceases to be on the CMAR's payroll or the Owner otherwise agrees to a substitution in writing.

Section 2.07 Responsibility for Uncovering and Correcting the Work

a) If any portion of the Work has been covered contrary to the request of the Owner or contrary to the requirements stated in the Contract, the CMAR shall, if requested by the Owner, uncover for observation and, if unacceptable, shall be replaced and recovered at the CMAR's expense without any adjustment to the Contract Time.

b) If any portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the CMAR shall, if requested by the Owner, uncover for observation and, if unacceptable, shall be replaced and recovered at the CMAR's expense without any adjustment to the Contract Time. If the uncovered Work is in compliance with the requirements of the Contract, the cost to recover shall be paid by the Owner.

Section 2.08 Responsibility for Permits and Fees

Unless otherwise provided in the Contract Documents to be the responsibility of the Owner, the CMAR shall secure all the necessary Permits and pay the required license and inspection fees associated therewith, which are necessary for the proper execution and completion of the Work.

Section 2.09 Responsibility for Record Documents

The CMAR shall keep a marked-up, up-to-date set of the Progress Record Documents subject to the provisions of Section 01700 of the Technical Specifications. The Progress Record Documents shall depict the as-built conditions of the Work as they occur during the course of construction as an accurate record of the deviations between the Work as designed and the Work as installed.

Section 2.10 Responsibility for Substitutions of Materials, Products or Services

a) **Criteria.** The CMAR may propose the substitution of any material, product or service in lieu of that required or specified by brand name or trade name under the Contract subject to the requirements set forth herein. Any material, product or service manufactured by a company other than the one specified, or is brand name, model number or generic species other than what is specified, will be considered a substitution.

   Prior to proposing the substitution, the CMAR shall determine whether or not (i) the proposed material, product or service is, in fact, equal to that specified after considering the ease of operation, maintenance, repairs, appearance, longevity and any other pertinent factors and (ii) the substitution will result in a cost savings, reduced construction time or similar demonstrable benefit to the Owner. A substitution will not be permitted where the material or product is intended to match others in use, accommodate artistic design, specific function or economy of maintenance.

b) **Procedure.** The CMAR shall, within ten (10) days after award of the Contract submit to the Owner a written request for the substitution accompanied by drawings, samples, test data, certificates and any other pertinent documentation which will permit the Owner to make a fair and equitable decision concerning the proposed substitution. If the CMAR fails to submit the written request within the specified time, the substitution will not be allowed. If the substitution is acceptable to the Owner, a written authorization will be provided to the CMAR. No substitution will be allowed which will result in an increase in the Contract Amount.

c) **Burden of Proof.** The burden of proof in establishing the equality of the proposed substitution shall be upon the CMAR. Approval of a substitution shall not relieve the CMAR from responsibility for compliance with the other requirements of the Contract. The CMAR shall bear the expense for any changes in other parts of the Work caused by the substitution. The submission of a substitution incurs no obligation on the part of the Owner to accept or construe the proposed substitution to be an equal to that specified under the Contract. The Owner will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified under the Contract. The Owner will have a reasonable amount of time to review each request for substitution.

d) **Required Certificates.** The substituted material, product or service shall be supported, by proper certification from the governmental agencies having jurisdiction over its use in the Work.

Section 2.11 Responsibility for the Delivery and Storage of Materials and Equipment

The CMAR shall receive, unload, store in a secure place, and deliver from storage to the Work site all materials and equipment required for the performance of the Contract. The storage facilities and methods of storing shall meet with the Owner's approval. Any materials and equipment subject to degradation by exposure shall be stored in a suitable enclosure provided by the CMAR.

Section 2.12 Responsibility for Emergencies

When emergencies affecting or threatening the safety of any person or property occur, the CMAR shall immediately act with diligence to prevent injury to such person, or damage or loss to such property. If the CMAR should fail to act, the Owner may, but is not obligated to, act immediately to prevent injury to such person, or damage or loss to property, whichever may be endangered by the emergency by whatever means or method the Owner deems appropriate, including, but not limited to, the use of other contractors, the Owner's own forces, and the CMAR's on-site equipment and materials, in which case, the CMAR shall pay the Owner for any such expenses incurred as provided in Section 10.05 (Owner's Right to Carry out the Work).

Section 2.13 Responsibility for Payment of Subcontractors and Other Parties

The CMAR is responsible for paying each Subcontractor constructing any portion of the Work, and other parties providing labor, material or supplies in connection with the Work in a timely manner.

Section 2.14 Responsibility for Schedule of Values

a) The CMAR, if so requested by the Owner, shall have provided to the Owner a Schedule of Values allocated to various portions of the Work. The Schedule of Values shall be formed and supported by such data and information, acceptable to the Owner.

b) Each line item of the Schedule of Values shall contain no more than reasonable and attributable costs applicable to the line item. The CMAR shall warrant the Schedule of Values to be reliable and accurate, and documents used in the preparation thereof shall be available for review by the Owner. Each line item on the schedule of values shall contain all costs attributable to that item with the exception of the CMAR Fee, which shall be separately listed at the bottom of the Schedule of Values as a lump sum total for the Project and payable as a percentage of overall work complete.

Section 2.15 Responsibility for Site Inspection

a) The CMAR acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance.

b) The CMAR also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the CMAR to take the actions described and acknowledged in this Section will not relieve the CMAR from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Owner.

c) The Owner assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of the CMAR's officers or agents before the execution of the Contract, unless that understanding or representation is expressly stated in the Contract.

SECTION 3. OWNER'S RIGHTS AND RESPONSIBILITIES

Section 3.01 Owner's Designated Representative

a) The Owner shall appoint a Designated Representative with respect to the Contract. The Designated Representative shall have complete authority to transmit instructions, receive information, interpret and define the policies of the Owner and to make other decisions on the part of the Owner. Following the issuance of the Notice to Proceed, the Designated Representative may perform any review, communications, notices or other act required on the part of the Owner.

b) The Designated Representative shall not have any authority to change or interpret the Contract or Contract Documents, whether orally or in writing. Any ambiguity between the parties that require interpretation of the Contract or Contract Documents shall be resolved by written submission of a RFI by the CMAR. Any request for a change to the Contract or Contract Documents shall be resolved by written submission of a Change Order request by the CMAR. The Contract or Contract Documents shall not be changed without written confirmation from the Owner.

c) Communications from the Owner's Representative may be verbal or written. Any verbal instruction or directive by the Owner's Representative to the CMAR that changes either the Contract Amount or Contract Time or that changes either the Contract or the Contract Documents shall not be valid unless confirmed in writing and acknowledged and accepted by the Owner 1) within five working days or 2) when the work that is subject to the verbal directive commences, whichever is earlier. Absent written confirmation of the Owner's Representative's verbal instruction to the CMAR, the parties agree that there is a strong presumption that no such verbal directive was ever given.

Section 3.02 Right to Perform or Award Separate Contracts for Portions of the Work

a) **Coordination.** The Owner reserves the right to perform portions of the Work related to the Project with its own forces or to award a separate contract or contracts for portions of the Work under the same or similar conditions of the Contract. The Owner will provide for the coordination of the activities by its own forces and that of each separate contractor with the Work of the CMAR. The CMAR shall participate with the Owner and the other separate contractors in reviewing their construction schedules when so directed by the Owner.

b) **Revisions to the Guaranteed Project Schedule.** The CMAR shall make the revisions to the Guaranteed Project Schedule deemed necessary after a joint review and mutual agreement. The Guaranteed Project Schedule as revised shall then constitute the schedule to be used by the CMAR. If the activities by the Owner or the other contractors are completed within the time reflected in the Guaranteed Project Schedule as revised or an extension is granted in the Contract Time, the CMAR shall be precluded from asserting any claim for delay or additional expenses resulting from the Owner exercising its rights granted herein.

c) **Storage of Equipment and Materials.** The CMAR shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the CMAR's construction and operations with theirs as required by the Contract.

d) **Reporting of Separate CMAR Deficiencies.** If part of the Work depends on the proper execution of construction or operations by the Owner or a separate contractor, the CMAR shall, prior to proceeding with the Work and each portion thereof, promptly report to the Owner the apparent discrepancies or defects such other construction or operations that would render the Work unsuitable for proper execution by the CMAR. The CMAR's failure to report such discrepancy or defect shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction or operations is fit and proper for the CMAR to proceed with the Work, except as to defects not then reasonably discoverable.

e) **Delays and Damages to Separate CMARs.** The CMAR shall defend, indemnify and hold the Owner harmless pursuant to the provisions of Section 9.01 (General Indemnity) of the General Conditions for each claim asserted by a separate contractor for delay, improperly timed activity, defective construction or damage to the work of the separate contractor which is caused by the CMAR. The CMAR agrees to make no claim of cost or damages against the Owner for any delay, improperly timed activity, defective construction or damage to the Work of the CMAR which is caused (i) by the CMAR, or (ii) by a separate contractor unless such contractor is under contract to the Owner, or to a general contractor of the Owner.

The Owner shall pay each claim of cost incurred by the CMAR arising from the delay, improperly timed activity, defective construction or damage to the Work caused by a separate contractor acting under the direction or control of the Owner, or under the direction and control of a general contractor of the Owner, provided such claim meet the requirements contained in Section 01200 (Price and Payment Procedures) of the Technical Specifications.

The failure of either party to pay the costs as required herein shall entitle the other party to file a claim pursuant to Section 12 (Disputes between the Parties) of the Contract.

f) **Repair of Damages.** The CMAR shall promptly repair any damage caused by the CMAR to the work of a separate contractor or to any property of the Owner or other property owner if so requested and permitted by the injured party. Such repair shall be in lieu of the payment of monetary damages to the injured party.

Section 3.03 Right to Perform Additional Work Within or Near the Project Site

a) The Owner reserves the right at any time to contract with other contractors whose work may occur within or near the site of the Project. In such event, the CMAR agrees not to interfere with or hinder the progress of work by the other contractors, and the Owner agrees to require such contractors to coordinate their work with that of the CMAR. The CMAR agrees to cooperate and coordinate with such contractors as directed by the Owner.

b) The CMAR shall arrange the Work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same Project. The CMAR shall join the Work with that of the other contractors in an acceptable manner and shall perform it in proper sequence to that of the other contractors.

Section 3.04 Progress Meetings

The Owner shall chair the progress meetings between the parties to the Contract that shall include a representative from each major subcontractor if so requested by the Owner. The Owner shall take notes of the progress meeting and shall distribute copies to each party within five (5) days after completion of the meeting. The conference notes shall summarize decisions made at the meeting and reflect the weekly job progress in comparison to the Guaranteed Project Schedule. The attendees are responsible for remembering their own required action and the conference notes shall serve only as a reminder and record of the required action.

Section 3.05 Right of Suspension

The Owner may, without cause, order the CMAR in writing to suspend, delay or interrupt the Work, in whole or in part, for such period of time as determined by the Owner. An adjustment shall be made for the increase in the cost of performing the Contract (excluding therefrom any profit to the CMAR), on the increased cost of performance caused by the suspension, delay, or interruption. No adjustment shall be made to the extent that:

i) The performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CMAR is responsible; or

ii) An equitable adjustment is made or denied under another provision of the Contract Documents, or

iii) The CMAR could have mitigated the increase in cost to perform the Contract.

Section 3.06 Right of Termination for Convenience

a) Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract in whole or in part, for any reason whatsoever (including, but not necessarily limited to, funding limitations). Upon such an occurrence the Owner will immediately notify the design professional and the CMAR in writing specifying the effective termination date of the Contract.

b) After receipt of the Notice of Termination, the CMAR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at the point in the Contract:

i) Stop all construction;

ii) Place no further orders for materials or services;

iii) Terminate all subcontracts;

iv) Cancel all material and equipment orders as applicable; and

v) Take whatever action is necessary to protect and preserve all property related to this Contract, which is in the possession of the CMAR.

c) Within 180 days of the date of the Notice of Termination, the CMAR shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, including reasonable profit as allowed by the Contract Documents on completed Work, and reasonable demobilization costs as allowed by the Contract Documents. If the CMAR fails to submit the proposal within the time allowed, the Owner may determine the amount due to the CMAR because of the termination and shall pay the determined amount to the CMAR.

Section 3.07 Right to Replace Subcontractor

The Owner shall have the right to require that the CMAR replace any Subcontractor at any time and for any reason by requesting such change in writing in accordance with the provisions of NRS 338.

SECTION 4. CONTRACT COMMENCEMENT, PROGRESS AND COMPLETION

Section 4.01 Notice to Proceed

a) After receipt of all required submittals, the Owner will issue the Notice to Proceed. The CMAR shall not commence construction activities at the Work site prior to the date specified in the Notice to Proceed.

b) If deemed appropriate, the Owner may issue a Material Notice to Proceed to the CMAR authorizing the ordering of supplies, materials, equipment or other items related to the Work prior to issuance of the Notice to Proceed.

Section 4.02 Guaranteed Project Schedule

Within the time provided in Section 01330 of the Technical Specifications, the CMAR shall submit the Guaranteed Project Schedule for the Work, which shall contain the appropriate milestones by which the Owner can judge and determine the progress thereof.

Section 4.03 Progress of the Work

a) The CMAR shall provide sufficient labor, materials, facilities, and equipment and shall work such hours, including night shifts, overtime operations, Saturdays, Sundays and holidays, as may be necessary to insure the prosecution and completion of the Work or separable portions thereof, in accordance with the Guaranteed Project Schedule.

b) If the progress of the Work falls behind or fails to proceed in accordance with the Guaranteed Project Schedule, or it becomes apparent to the Owner from the current schedule that the Work will not be substantially complete within the Contract Time (as adjusted by Owner approved Change Orders), in addition to the other requirements of the Contract and remedies available to the Owner, the CMAR agrees to take the following actions at no additional cost to the Owner to correct such tardiness:

   i) Increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the Owner, the backlog of Work;

   ii) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing, sufficient to substantially eliminate, in the judgment of the Owner, the backlog of Work; and,

   iii) Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

c) The failure of the CMAR to comply with the requirements of this Section or to remedy the tardiness shall be grounds for a determination by the Owner that the CMAR is failing to diligently prosecute the Work, in which case the Owner may, after the notice of the breach has been provided to the CMAR pursuant to Section 10.01 (Definition of Breach) of the Contract, without prejudice to other remedies the Owner may have and regardless of whether the CMAR has taken or is taking corrective action, immediately correct the CMAR's failure at the CMAR's expense by exercising the right to perform and carry out the work as provided in Section 10.05 (Owner's Right to Carry Out the Work) including the use of the Owner's work forces, to award separate contracts, to supplement the CMAR's work forces, to prepare or have prepared schedules which shall be used to determine the provisions of the Contract to withhold actual and anticipated liquidated damages, and any other means the Owner deems appropriate.

Section 4.04 Contract Time

Time is of the essence in the performance and completion of this Contract. The CMAR shall commence the Work on the date set by the Owner in the Notice to Proceed, and shall achieve Substantial Completion of the Work within the Contract Time.

Section 4.05 Payment Terms and Definitions

a) Cost of the Work (and related terms)

   i) The Cost of the Work includes wages paid, but not bonuses paid, for labor in the direct employ of the CMAR in the performance of the Work, exclusive of the labor that is to be included in the General Conditions. Labor rates, including fringe benefits, shall be in conformance with the applicable Prevailing Wage Rates as published by the Nevada State Labor Commission for this Project. This includes labor and management of CMAR self-performed construction work.

   ii) The Cost of the Work includes the cost of all materials, supplies, and equipment incorporated in the cost of the Work, including costs of certificates of inspection and testing, transportation, storage, and handling, excluding testing and inspections required to be paid for directly by Owner.

   iii) The Cost of the Work includes all payments made by the CMAR to the Subcontractors and suppliers for the cost of the Work performed under the Contract.

   iv) The Cost of the Work includes all costs directly incurred in the performance of the Work or in connection with the Project, and not included in the CMAR's Fee, which are reasonably inferable from the Contract Documents as necessary to produce the intended results and not already included in the General Conditions, CMAR Fee or CMAR Contingency.

v) Sales, use, gross receipts or other taxes, tariffs or duties related to the cost of the Work for which the CMAR is liable and not already included in the General Conditions, CMAR Fee or CMAR Contingency.

b) CMAR's General Conditions (and related terms)

i) The CMAR's General Conditions includes salaries of CMAR's management and administrative employees when stationed at the field office, in whatever capacity employed, excluding construction labor and management of CMAR self-performed construction work, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing jobsite functions while located at the principal office; including, by way of example and not limitation, the CMAR's Project manager, Project engineer, Project coordinator, Project estimator, Project scheduler and project superintendant.

ii) The CMAR's General Conditions includes the cost of all employee benefits and taxes for employees including, but not limited to, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the CMAR's standard personnel policy, insofar as such costs are actually paid to employees of the CMAR detailed in subsection a above who are engaged in the Work for employees.

iii) The CMAR's General Conditions includes the cost (including transportation and maintenance) of all supplies, equipment, temporary facilities, and hand tools (not owned by workers) that are used or consumed in the performance of the Work.

iv) The CMAR's General Conditions includes rental charges for all necessary machinery and equipment, exclusive of hand tools owned by workers, used for the Work, whether rented from the CMAR or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs at rates consistent with those prevailing in the area.

v) The CMAR's General Conditions includes sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the CMAR is liable, as they specifically relate to the items included in the General Conditions cost line item.

vi) The CMAR's General Conditions includes all costs associated with establishing, equipping, operating, maintaining, and demobilizing the specified field office(s).

vii) The CMAR's General Conditions includes all costs for reproduction, photographs, fax transmissions, long distance telephone calls, data processing services, postage, express delivery charges and on-site telephone service at the CMAR's field office.

viii) The CMAR's General Conditions include all costs related to management of the CMAR's safety program.

ix) The CMAR's General Conditions include the cost of CMAR bonding as stipulated herein.

x) The CMAR's General Conditions include all required Permits, fees, licenses, and tests not paid by the Owner.

xi) The CMAR's General Conditions include the CMAR's cost of insurance as stipulated in Section 8 herein.

xii) The CMAR's General Conditions include all temporary water, power, and fuel costs necessary for the Work.

xiii) The CMAR's General Conditions include all costs for removal of all generated non-hazardous substances, debris, and waste materials.

xiv) The CMAR's General Conditions shall not include transportation, travel, and hotel expenses for the CMAR's personnel incurred in connection with the Work unless specifically approved in writing by the Owner.

c) CMAR's Fee (and related terms)

i) The CMAR's Fee includes salaries and other mandatory or customary compensation of the CMAR's employees at its principal and branch offices, except employees assigned to the Project at the principal office. Specifically excluded are CMAR's personnel paid under CMAR's General Conditions.

ii) The CMAR's Fee includes general and administrative expenses of the CMAR's principal and branch offices other than the field office.

iii) The CMAR's Fee includes the CMAR's capital expenses, including interest on the CMAR's capital employed for the Work.

iv) The CMAR's Fee includes the CMAR's profit.

d) CMAR's Contingency (and related terms)

i) The CMAR's Contingency may be used to fund the following:

1) Increases in the Cost of the Work identified through the refinement, development and completion of the Contract Documents or procurement of the Work, including increases in subcontractor or supplier costs, after acceptance by the Owner of the GMP and execution of this Contract. Decreases in the Cost of the Work shall transfer to the CMAR Contingency.

2) Increases in the Cost of the Work for concealed conditions that can be reasonably inferred from the construction documents and/or the Work.

3) Rework by the CMAR that is not a result of the CMAR's or Subcontractor's negligence or lack of coordination or communication with the Consultant or trade Subcontractors.

4) Increase in the cost of the General Conditions. Decreases in the cost of the General Conditions shall transfer to the CMAR Contingency.

5) Any deductible incurred as a result of a Builder's Risk Insurance claim.

ii) The CMAR's Contingency shall not be used to fund the following:

1) Increases in the Cost of the Work as a result of an omission or correction in the Contract Documents that should have been identified through a reasonable constructability check and coordination review of the construction documents by the CMAR during the discharge of the CMAR's pre-construction duties. Design omissions or corrections which the CMAR could have reasonably identified through a reasonable constructability check and coordination review will be resolved on a case-by-case basis.

2) Increases in the Cost of the Work as a result of the CMAR's or subcontractor's negligence or lack of coordination or communication with the Consultant or trade Subcontractors.

iii) The Owner's Contingency shall be used to fund the following:

1) Increase in the Cost of the Work as a result of errors and omissions of the Consultant that could not have been reasonably discovered by the CMAR through a reasonable constructability check and coordination review of the construction documents by the CMAR during the discharge of the CMAR's pre-construction duties.

2) Increases in the Cost of the Work as a result of Building Code compliance or outside agency requirements identified through the refinement, development and completion of the Contract Documents after acceptance by the Owner of the GMP and execution of this Contract or during construction of the Work, including increases in Subcontractor or Supplier costs.

3) Increases in the Cost of the Work due to an unforeseen condition that could not be reasonably foreseeable from the Contract Documents.

4) Increases in the Cost of the Work due to an unavoidable event, including weather, that arises and that could not have been anticipated from the Contract Documents.

iv) For each use of the CMAR's Contingency, the CMAR shall:

1) Notify the Owner in writing no later than fourteen (14) days after the event or first knowledge of the cause that results in a request to use the CMAR Contingency;

2) Attempt to gain Owner approval of the use of the CMAR Contingency prior to the expenditure;

3) Provide backup documentation as requested by the Owner to justify the use and amount of the CMAR Contingency request; and

4) Document the approval of the expenditure of the CMAR Contingency though the use of a form acceptable to the Owner.

v) Reference Division 1 of the Technical Specifications for the allowable CMAR's Contingency mark-ups, including subcontractor mark-up, for overhead and profit.

Section 4.06 Progress Payments and Retainage

a) **Schedule of Values.** Within fourteen (14) days after the issuance of the Notice to Proceed, the CMAR shall submit to the Owner and the Consultant a schedule of values of the various portions of the Work, aggregating to the total Contract Sum, divided to facilitate payments to Subcontractors, prepared in a form acceptable to the Owner, and supported by such data to substantiate its correctness as the Owner may require. This schedule, when approved by the Owner and the Consultant, shall be the basis for each Progress Payment Application. The scheduled costs shall

be itemized in accordance with the breakdown listed in the CMAR GMP Proposal and according to the list of defined components included in Subsection b below.

b) **Progress Bills and Payments.** The CMAR may submit a monthly progress bill requesting payment for the Work performed to-date after measuring the Work and estimating its value based upon the unit prices contained in the Contract or the approved Schedule of Values. The progress bill must be submitted and must be accompanied by photographs of the Work completed to date and other supporting documentation (such as material receipts and storage verifications). The quantities and value estimates must have the concurrence of the Owner. As permitted pursuant to Section 10.06 (Deduction from Progress Payments) of these General Conditions and NRS Chapter 338, the Owner may withhold from the progress payment an amount that is sufficient to protect the Owner for the CMAR's failure to comply with the requirements of the Contract or applicable building codes, laws or regulations.

c) **Certified Payroll Reports.** The CMAR must submit certified payroll records each month as required by NRS Chapter 338. If the certified payroll records for the previous month have not been received, the Owner may withhold funds from the progress payment in accordance with NRS Chapter 338. The Owner requires the use of LCP Tracker software for the submission of certified payrolls by the CMAR and all of its Subcontractors.

d) **Retainage.** From the progress payment to be made to the CMAR, the Owner shall deduct and retain an amount equal to five percent (5%) of the amount approved for payment through 50% completion of the work.

e) **Payment for Stored Material.** The Owner may at its discretion pay the CMAR the cost of the material that is to be used in the performance of the Work provided the material complies with the requirements of the Contract and the following conditions are satisfied:

i) The CMAR stores the material in a manner acceptable to the Owner at the Work site or other site that is acceptable to the Owner.

ii) The CMAR furnishes evidence of the quantity and quality of the stored material that is acceptable to the Owner.

iii) The CMAR furnishes legal title (free of liens or encumbrances of any kind) for the stored material that is acceptable to the Owner.

iv) The CMAR furnishes evidence the stored material is insured against loss, damage or disappearance thereof prior to use in the Work that is acceptable to the Owner.

The transfer of title to, or the payment for, the stored material by the Owner shall in no way relieve the CMAR of responsibility for placing the material in accordance with the requirements of the Contract.

If payment is being sought for material not specifically purchased for the Work, but taken from the CMAR's stock, then in lieu of an invoice, the CMAR shall submit to the Owner a statement and accompanying affidavit certifying that the material was taken from the CMAR's stock and that the claimed material and transportation costs represent the actual costs to the CMAR.

The progress bill requesting payment for the stored material shall not exceed the Contract price for such material or the price for the Contract item comprising the material used by the CMAR.

SECTION 5. COMPLETION OF PROJECT

Section 5.01 Substantial Completion

a) When the CMAR considers the Work or portion thereof has reached Substantial Completion, the CMAR shall so inform the Owner. The Owner shall schedule a walk-through to establish a punch list of items to be completed or corrected by the CMAR.

b) If the Work or any designated portion thereof has reached Substantial Completion, and all applicable governmental authorities have granted final approval of the Work, the Owner will issue a Certificate of Substantial Completion establishing the date of Substantial Completion identifying responsibilities of the Owner and CMAR for security, maintenance, utilities, damage to the work and insurance, and fixing the time for the CMAR to finish the items on the punch list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted to the Owner and CMAR for their written acceptance of responsibilities assigned to them in such Certificate.

c) In the event the CMAR is unwilling to provide written acceptance of the Certificate of Substantial Completion, the Owner shall issue the Certificate without the CMAR's signature, and (i) the CMAR shall immediately comply with the provisions of the Certificate, and any dispute involving the CMAR's unwillingness to provide written acceptance shall be resolved in accordance with Section 12 (Disputes Between the Parties). In such event, the Owner may withhold Liquidated Damages based on the completion date shown on the issued Certificate of Substantial Completion until such time as the dispute is resolved between the parties.

Section 5.02 Punch List

a) The CMAR shall complete or correct the Work identified on the punch list within the time specified on the Certificate of Substantial Completion or as otherwise directed. If the CMAR fails to satisfactorily complete or correct the punch list items, such failure shall constitute a breach of this Agreement and the Owner shall have the option to invoke any of the remedies provided for under Section 10.

b) The time stated for completion of punch list items shall include final cleanup of the Work site.

Section 5.03 Final Inspection and Final Acceptance of the Work

When the CMAR considers the Work is complete, the CMAR shall so notify the Owner in writing. If, after inspection and testing, the Owner determines that the Work has been completed as required by the Contract and the Contract otherwise fully performed, the Owner shall inform the CMAR that application for final payment may be made. The Contract shall not be considered to be fully performed until the CMAR provides the Owner with the certificates, guaranties, releases, certified payroll records, affidavits, record documents and other documents required under the Contract. Final acceptance of the Work shall be confirmed by the making of final payment unless otherwise stipulated at the time such payment is made.

Section 5.04 Final Payment

a) Provided the Contract has been fully performed pursuant to Section 5.03 (Final Inspection and Final Acceptance of the Work) of the Contract, the CMAR shall prepare and submit a final payment application for all Work performed under the Contract. The acceptance of final payment shall operate as a release to the Owner by the CMAR of all claims and liabilities for all things done or furnished in connection with the Work and for every act or omission, negligent or otherwise, of the Owner and others relating to or arising out of the Work.

b) No payment, final or otherwise, shall operate to release the CMAR from any obligations under the Contract or the Sureties from any obligations under the Performance Bond, Labor and Material Payment Bond or the Guaranty Bond.

Section 5.05 Non-Conforming Work Not Accepted

Neither final acceptance, the making of final payment, nor the entire or partial occupancy of the completed Work by the Owner, shall constitute an acceptance of the Work, or any portion thereof, not completed in accordance with the requirements of the Contract.

SECTION 6. LIQUIDATED AND DELAY DAMAGES

Section 6.01 Owner's Recovery of Liquidated Damages

a) The CMAR acknowledges that time is an essential element of this Contract and for that reason the Work needs to proceed and be prosecuted vigorously to completion. In the event that the Work is not completed within the Contract Time set forth in Section 5 (Commencement and Completion Deadline) of the Owner-CMAR Agreement of the Contract, the CMAR further acknowledges that the Owner will suffer damages which are difficult to ascertain, such as, but not necessarily limited to, the cost associated with additional architectural, engineering, inspection, supervision and contract administration.

b) Because it is difficult and impractical to fix the amount of actual damages which would be suffered by the Owner if the CMAR fails to meet the completion deadline, the parties have agreed that the amount of liquidated damages set forth in Section 6 of the Owner-CMAR Agreement is a reasonable estimate of the damages to be suffered by the Owner.

c) The CMAR agrees to pay the Owner Liquidated Damages for each day that the Work exceeds the completion deadline until the CMAR reaches Substantial Completion of the Work. The Liquidated Damages provided for therein pertain only to the failure to complete the Work by the completion deadline, and does not preclude recovering any increased costs incurred by the Owner in completing the Work. Liquidated Damages shall be in addition to any other remedies that may be available to the Owner. By executing the Owner-CMAR Agreement, the CMAR agrees that the amount of liquidated damages set forth therein is fair and reasonable.

d) If the Owner permits the CMAR to complete the Work, or any part thereof, after the completion deadline or any extensions thereto, such permission shall not be construed as a waiver on the part of the Owner of any of its rights or remedies under the Contract.

e) The Owner's right to withhold Liquidated Damages pursuant to the provisions of this Section, or any other section of the Contract, is self-executing, and is not subject to the notice of claim and dispute resolution procedures set forth in Section 12 (Disputes Between the Parties) of the Contract. If the CMAR disagrees with the assessment or withholding of any Liquidated Damages, such disagreement shall be treated as a dispute between parties subject to the notice of claim and alternative dispute resolution procedures set forth in that Section.

Section 6.02 Delay Damages

a) The CMAR shall not make any claim against the Owner for an increase in the Contract Amount, or for any damages, losses or additional expenses which the CMAR may suffer as a result of any delay in the completion of the Work (regardless of the circumstances giving rise to the delay), with the exception of the following:

i) Delays so unreasonable in length as to amount to an abandonment of the Project,

ii) Delays caused by fraud, misrepresentation, concealment or other bad faith by the Owner,

iii) Delays caused by active interference by the Owner, or

iv) Delays caused by a decision by the Owner to significantly add to the scope or duration of the public work.

b) If any of the exceptions set forth in (i) through (iv) above are determined by the Owner to be applicable, the Owner may grant a time extension commensurate with the delay, increase the Contract Amount and/or consider for payment a claim for damages, losses or additional expenses resulting from any delay in the completion of the Work provided such claim meets the requirements set forth in Section 01200 (Claims for Adjustment and Disputes) of the Technical Specifications. The Owner shall determine the validity of the claim and the amount to be paid, and such consideration or payment shall not invalidate, limit or otherwise waive the prohibition provisions of this Section with respect to any future delay claims of the CMAR.

c) Without limiting the circumstances that may cause delays for which the CMAR is assuming the risk for his delay damages, the following possible delay circumstances are considered within the contemplation of the parties:

i. Unknown or uncertain conditions including, but not necessarily limited to, the discovery of caliche, ground water and all other subsurface conditions,

ii. Weather conditions (including, but not limited to, precipitation, flood, mud slides, sink holes, ice and snow resulting from precipitation, wind, temperature or humidity) and the resultant effects thereof regardless of the nature, duration, severity or abnormality of such weather condition,

iii. Unmarked utilities or utility interferences,

iv. Events of war, labor disputes, transportation delays, freight embargos, earthquakes, floods, epidemics, terrorist threats or acts, workplace violence, theft, vandalism damage to the Work (including fire and explosion), acts of God and all other events, acts or omissions resulting in the unavailability of labor, materials, equipment or utilities,

v. Acts or omissions of the Owner and other governmental authorities acting in their role as code and regulation enforcement regulators,

vi. Acts or omissions of contractors, subcontractors, suppliers and material manufacturers involved in the Work,

vii. Acts, omissions and coordination of other contractors regardless of the event location or contractual relationship between the parties, unless such contractors are under the direction or control of the Owner, or under the direction or control of a general contractor of the Owner, and

viii. Discovery of hazardous substances or substances suspected of being hazardous,

d) This Section shall apply to any claim described as a "disruption," "acceleration," "suspension," "schedule change," "impact to the progress of the Work" or some other term avoiding use of the term "delay."

e) No CMAR claim for delay and impact damages shall be computed or determined on the basis of the Eichleay formula or a related formula to allocate unabsorbed overhead costs or expenses. Any claim and impact damages shall be computed or determined on the basis of actual damages incurred by the CMAR.

SECTION 7. BONDING REQUIREMENTS

Section 7.01 Required Bonds

The CMAR shall purchase and maintain throughout the term of this Agreement, the following bonds:

i) Performance Bond insuring performance of all of the obligations of the Contactor as required by the Contract in the amount of 100% of the Contract Amount.

ii) Labor and Material Payment Bond insuring the payment of all of the Subcontractors and material suppliers of the CMAR in the amount of 100% of the Contract Amount.

iii) Guaranty Bond insuring against defects or deficiencies in the workmanship of, and materials used in, the Work in the amount of 100% of the Contract Amount. The Guaranty Bond shall take effect upon Substantial Completion of the Work and shall remain in effect for a period of one year thereafter or for longer period if so provided in the Specifications.

Section 7.02 Acceptable Surety

a) The bonds must be issued by a surety who is listed in Circular 570 (current edition) issued by the Department of Treasury, Fiscal Services as company holding a certificate of authority as an acceptable surety or reinsuring company of federal projects.

b) The Surety must be licensed to do business in the State of Nevada. Bonds issued by individuals as surety are not acceptable to the Owner. The CMAR shall require the agent who executes the bond on behalf of the Surety to attach to the bond a correct copy of the power of attorney authorizing the agent to execute the bond.

Section 7.03 Failure to Maintain Bonds

If, for any reason, the bonds are not maintained in effect as required herein, the surety files for protection under the federal bankruptcy laws or similar state laws or the surety rating decreases from that required under Section 7.02 (Acceptable Surety) of the Contract, the Owner may require the CMAR to procure bonds from another surety to be substituted in lieu of the bonds originally provided to the Owner, and the failure to procure the substitute bonds shall constitute a breach of the Contract entitling the Owner to any of the remedies set forth in Section 10 (Breach of Contract and Remedies) of the Contract.

SECTION 8. INSURANCE REQUIREMENTS

Section 8.01 Owner Provided Builder's Risk Insurance.

The Owner shall provide Builder's Risk Insurance insuring against all risks of loss (including fire, testing, vandalism, malicious mischief, collapse and water damage) for 100% of the replacement value of the completed portion of the Work including delay damages or damage to materials stored on or outside the Project, or in transit thereto.

Scope of Coverage:	Project Specific
Type of Coverage:	Occurrence Basis
Amount of Deductible	$10,000*
Amount of Coverage:	Contract Amount
Policy Period:	Effective until Final Completion of the Project
Named Insured:	City of Las Vegas

* The Deductible may be paid from the CMAR's Contingency. However, no reimbursement will occur if the claim is a result of the CMAR's or its Subcontractor's negligence.

Section 8.02 CMAR Provided Insurance - General

a) The CMAR shall purchase and continuously maintain in full force and effect for the policy periods specified below the insurance policies specified in this Section. The insurance required hereunder shall not be interpreted to relieve the

CMAR of any obligations under the Contract. The CMAR shall remain fully liable for all deductibles, including Builder's Risk Insurance provided by the Owner and amounts in excess of the coverage actually realized, except Builder's Risk.

b) During construction of the project by the CMAR, the CMAR shall, for the purposes of protecting and defending Owner, require CMAR's Subcontractors providing labor and/or materials with regard to such work to either (a) maintain throughout the course of work the insurance coverages and limits required under Section 8 through participation as named insureds under any "contractor controlled" or "wrap up" insurance program maintained by the CMAR for the Project, or (b) to obtain and keep in full force and effect at all times throughout the course of work the following insurance, the cost and expense of which shall be borne by such the CMAR and/or Subcontractor. All insurance and requirements in any form or manner is subject to approval and acceptance by the Owner.

c) If the CMAR utilizes umbrella or excess policies to meet limit requirements, these policies must "follow form" and afford no less coverage than the primary policy. If utilized, the CMAR shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against the Owner for damages covered by Umbrella or Excess Liability obtained by the CMAR as required by the Owner.

d) **Commercial General Liability Insurance.** The CMAR shall provide and maintain Commercial General Liability Insurance (broad form coverage) insuring against claims for bodily injury, property damage, personal injury and advertising injury that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form for Commercial General (CG 00-01-10-01). By its terms or appropriate endorsements such insurance shall include the following coverage, to wit: Bodily Injury, Property Damage, Fire Legal Liability (not less than the replacement value of the portion of the premises occupied), Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations (for a minimum of two (2) years following Final Completion of the Project). The policy cannot be endorsed to exclude the perils of explosion (x), collapse (c) and underground (u) exposures without the approval of the Owner.

If Commercial General Liability Insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the CMAR may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the CMAR. Any such excess insurance shall be at least as broad as the CMAR's primary insurance.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	$1,000,000 per occurrence
	$2,000,000 aggregate
Policy Period:	Annual Policy. Effective for 2 years following Final Completion of the Project
Name Insured:	CMAR
Additional Insured Parties:	City of Las Vegas (its officers, employees and agents)

e) **Automobile Liability Insurance.** The CMAR shall provide Commercial Automobile Liability Insurance insuring against claims for bodily injury and property damage and covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Project Site, including loading and unloading. The coverage shall be primary and non-contributory and shall be provided by Insurance Services Office form for Commercial Auto Coverage (CA-00-01-10-01) or equivalent.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	$1,000,000 Combined Single Limit
Policy Period:	Annual Policy. Effective for the duration of this Agreement
Name Insured:	CMAR
Additional Insured Parties:	City of Las Vegas (its officers, employees and agents)

f) **Excess Liability Insurance.** A policy of excess liability coverage with annual limits of not less than $1,000,000 on a following form basis excess of the insurance coverage for General Liability and Automobile Liability. The insurance required under this Section may be reached by a combination of following form excess liability and/or umbrella liability policies which coverage shall be layered, with coverage dropping down and being provided by each subsequent layer, as coverage under prior layers is exhausted; provided that such layered coverage shall not result in any coverage gaps, and further provided that such coverage, in combination, meets all of the other applicable requirements set for General Liability and Automobile Liability and complies with all other applicable provisions contained in these Insurance Requirements,

g) **Workers' Compensation.** The CMAR shall provide Worker's Compensation Insurance sufficient to meet its statutory obligation under NRS Chapter 616 to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death). The policy required herein shall be primary and non-contributory in its coverage.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	Statutory
Policy Period:	Annual Policy. Effective for the duration of this Agreement
Name Insured:	CMAR
Additional Insured Parties:	City of Las Vegas (its officers, employees and agents)

h) **Employer's Liability Insurance.** The CMAR shall provide Employer Liability Insurance covering its legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by an employee. The policy required herein shall be primary and non-contributory in its coverage.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	$1,000,000 bodily injury by accident $1,000,000 bodily injury by disease $1,000,000 policy limited
Policy Period:	Annual Policy. Effective for the duration of this Agreement
Name Insured:	CMAR
Additional Insured Parties:	City of Las Vegas (its officers, employees and agents)

i) **CMAR Environmental Impairment Liability Insurance. (This Section ☐ IS ☒ IS NOT Applicable to this Contract)** The CMAR shall provide and maintain Environmental Liability Insurance that covers liability against claims for bodily injury (including wrongful death) and property resulting from the presence or removal of asbestos on the Project Site.

Scope of Coverage:	Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	$1,000,000 per occurrence $2,000,000 aggregate
Policy Period:	Annual Policy Effective until Final Completion of the Project
Named Insured:	CMAR
Additional Insured Parties	City of Las Vegas (its officers, employees and agents

A separate certificate of insurance evidencing the coverage required herein shall be provided to the Owner.

j) **Installation Floater Insurance. (This Section ☐ IS ☒ IS NOT Applicable to this Contract)** The CMAR shall provide and maintain Installation Floater Insurance insuring against damage or destruction of the Owner-provided materials or equipment in transit to, or stored on or off the Project Site, and during handling and installation by the CMAR for use in the Work. Installation Floater Insurance shall also insure against damage or destruction to existing

infrastructure and equipment due to the CMAR's actions associated with the installation of said materials or equipment.

Scope of Coverage:	Project Specific
Type of Coverage:	Occurrence basis
Amount of Coverage:	TBD
Policy Period:	Effective until Final Completion of the Project
Named Insured:	CMAR
Additional Insured Parties	City of Las Vegas (its officers, employees and agents)

Section 8.03 Acceptable Insurance Company

The insurance company providing any of the insurance coverage required herein shall have a Best's Key rating of A VII or higher, (i.e., A VII, A VIII, A IX, A X, etc.) and shall be subject to approval by the Owner. Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance.

Section 8.04 Premiums, Deductibles and Self-Insured Retentions

The CMAR shall be responsible for payment of premiums for all of the insurance coverages required under this Section 8. The CMAR further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the CMAR is responsible hereunder, the CMAR shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over Ten Thousand Dollars ($10,000) in the CMAR insurance must be declared and approved by Owner.

Section 8.05 Certificates of Insurance

The CMAR will deliver to Insurance Tracking Services, Inc. (ITS), the Owner's representative, a certificate of insurance with respect to each required policy to be provided by the CMAR under this Section 8. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

Submit certificates of insurance to:

City of Las Vegas	Account Manager: Michael Palacios
C/O Insurance Tracking Services, Inc. (ITS)	Phone: (888) 435-2955 ext. 503
P.O. Box 21919	Fax: 562-435-2999
Long Beach, CA 90801	Email: michael.palacios@instracking.com

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section 8 shall be provided to ITS if so requested.

Section 8.06 Renewal Policies

The CMAR shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

Section 8.07 Cancellation and Modification of Insurance Coverages

Each insurance policy supplied by the CMAR must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases, has been given to the Owner and such notice is by certified mail, return receipt requested. This notice requirement does not waive the Insurance Requirements contained herein.

Section 8.08 No Recourse

There shall be no recourse against Owner for the payment of premiums or other amounts with respect to the insurance required from the CMAR under this Section 8.

Section 8.09 Endorsements and Waivers

All insurance policies required hereunder shall contain or be endorsed to contain the following provisions:

i) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insured, additional insured parties, and their respective members, directors, officers, employees and agents and shall specify that coverage continues notwithstanding the fact that the CMAR has left the Project site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees and agents shall be in excess of such insurance and shall not contribute with it.

ii) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insured or additional insured parties or their respective members, directors, officers, employees and agents.

iii) The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Section 8.10 Failure to Provide or Maintain Insurance Coverages

The CMAR's failure to provide or maintain any of the insurance coverage required herein shall constitute a breach of the Contract. In addition to the remedies that the Owner may have pursuant to Section 10 (Breach of Contract and Remedies) of the General Conditions, the Owner may take whatever action is necessary to maintain the current policies in effect (including the payment of any premiums that may be due and owing by the CMAR) or procure substitute insurance. The CMAR is responsible for any costs incurred by the Owner in maintaining the current insurance coverage in effect, or providing substitute insurance, and such costs may be deducted from any sums due and owing the CMAR.

SECTION 9. INDEMNITY

Section 9.01 General Indemnity

a) The CMAR shall protect, indemnify and hold the Owner, its officers, employees, agents and consultants (collectively the "Indemnitees") harmless from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments (including attorney fees, court costs) or other expenses of any and every kind or character (collectively the "Claims"), which may be recovered from or sought against the Indemnitees as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the CMAR, its officers, employees, agents, Subcontractors or suppliers (i) in the manufacturing or supplying (including transportation) of any materials, supplies or other products used in the Work, or (ii) in the performance of the terms, conditions and covenants of the Contract, regardless of whether the Claims were caused in part by the Indemnitees. The Owner may retain for its protection any money due and owing the CMAR under this Contract. In the event no money is due and owing, the surety, if required, of the CMAR, may be held until all of the Claims have been settled and suitable evidence to that effect furnished to the Owner.

b) It is expressly agreed that the CMAR shall defend the Indemnitiees against the Claims and in the event that the CMAR fails to do so, the Owner shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs to the CMAR.

Section 9.02 Patent Indemnity

a) The CMAR shall protect, defend and hold the Owner, its officers, employees, agents and consultants (collectively the "Indemnitees") harmless from and against all claims, losses, costs, damages, and expenses, including attorney fees, court costs or other expenses (collectively the "Claims"), incurred by the Indemnitees, or any of them, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by the CMAR, or out of the processes or actions employed by, or on behalf of, the CMAR in connection with the performance of the Contract. The CMAR shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by the Indemnitees; provided that the Indemnitees shall have notified the CMAR upon becoming aware of such claims or actions, and provided further that the CMAR's aforementioned obligations shall not apply to equipment, materials or processes furnished or specified by the Indemnitees.

b) In order to avoid such claims or actions, the CMAR shall have the right, at its expense, to substitute non-infringing equipment, materials or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or to obtain the necessary licenses authorizing the use of the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet the requirements of this Contract.

SECTION 10. BREACH OF CONTRACT AND REMEDIES

Section 10.01 Definition of Breach

If, during the existence of the Contract, the CMAR:

i) Fails to properly pay any Subcontractor or other parties for labor, materials or supplies as required by Section 2.13 (Responsibility for Payment of Subcontractors and Other Parties) of the Contract;

ii) Fails to begin the Work within the time specified in the Notice to Proceed as required by Section 4.01 (Notice to Proceed) of the Contract;

iii) Fails to diligently prosecute the Work as required by Section 4.02 (Guaranteed Project Schedule) or Section 4.03 (Progress of the Work) of the Contract;

iv) Fails to provide sufficient workmen, materials or equipment to assure the prompt completion of the Work as required by Section 4.03 (Progress of Work) of the Contract;

v) Fails to complete the Work within the Contract Time as required by Section 4.04 (Contract Time) of the Contract;

vi) Fails to complete the punch list within the time specified in the Certificate of Substantial Completion as required by Section 5.02 (Punch List) of the Contract;

vii) Fails to maintain the bonds, industrial insurance coverage for his employees, general liability insurance or any of the other policies of insurance as required by Sections 7.01 (Required Bonds) and 8.01 (Required Insurance) of the Contract;

viii) Fails to pay third party claims as required by Section 9.01 (General Indemnity) of the Contract;

ix) Fails to maintain licensure by the Nevada State Contractors Board as required by Section 11.01 (General Warranty) of the Contract;

x) Fails to promptly remedy the Work not in conformance with the Contract as required by Section 11.03 (Warranty Work Conforms with Requirements of the Contract);

xi) Fails to observe laws, ordinances, rules or regulations pertaining to the Project as required by Section 13.01 (General) of the Contract;

xii) Fails to investigate, or cooperate in the investigation of, complaints concerning the payment of prevailing wage rates requested by the Owner or the State Labor Commissioner's Office as required by Section 13.02 (Compliance with Labor Laws) of the Contract;

xiii) Fails to maintain solvency, allows a judgment to stand against the CMAR for a period of five (5) days, files a petition with the United States Bankruptcy Court, is adjudged insolvent or bankrupt, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy or insolvency; or

xiv) Fails to remedy any other material breach of the provisions of the Contract;

then the occurrence of any of the above shall constitute a breach of the Contract which if unremedied may constitute an Event of Default as described in Section 10.02 (Event of Default).

Section 10.02 Event of Default

a) The CMAR and the Surety under the Performance Bond shall be entitled to seven (7) days' notice of each breach described in Section 10.01 (Definition of Breach) of the Contract and given the opportunity within such time to cure the breach, provided, however, such breach is capable of a cure. If such breach is capable of a cure but by its nature cannot be cured within the seven day period, the CMAR or Surety may be allowed such additional time as may be reasonably necessary to cure the breach provided the cure is commenced within the seven day period and is diligently pursued to completion.

b) If any breach is not subject to cure, or is not cured as provided herein, the Owner may declare that an "Event of Default" has occurred and the Owner may, in addition to any other remedies available in law or equity, invoke any of the remedies provided for under this Section 10 (Breach of Contract and Remedies) of the Contract.

Section 10.03 Damages

Except for those breaches which are subject to Liquidated Damages set forth in Section 6.01 (Owner's Recovery of Liquidated Damages), if the CMAR fails to cure any Event of Default under this Agreement within the time provided in Section 10.02 (Event of Default), the Owner shall be entitled to damages resulting therefrom.

Section 10.04 Termination for Cause

a) Upon the occurrence of an Event of Default, the Owner may terminate the Contract which shall take effect immediately upon service of the notice on the CMAR and the Surety under the Performance Bond unless a different effective date is specified therein. In the event of such termination, the Surety shall have the right to take over and perform the Contract.

b) If the Surety does not commence performance of the Contract within ten (10) days of receipt of the notice, the Owner may do any and all of the following:

   i) Take possession of the Project Site and the materials, equipment, tools, and construction equipment and machinery thereon owned by the CMAR;
   ii) Accept the assignment of the CMAR's subcontracts pursuant to this Contract (Contingent assignment of subcontracts to Owner if Contract is terminated); and
   iii) Finish the Work by whatever method deemed expedient by the Owner.

c) The CMAR shall not be entitled to any further payment under the Contract until the Work is completed and accepted by the Owner. If the unpaid balance of the Contract Amount exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Owner through the default of the CMAR, the excess shall be paid to the CMAR. If, however, the damages and expenses exceed the unpaid balance of the Contract Amount, the CMAR and the Surety under the Performance Bond shall pay the difference to the Owner.

Section 10.05 Owner's Right to Perform the Work

a) If the CMAR fails to perform or proceed with the Work, or any part thereof, as required by the Contract, and fails within the seven (7) day notice required pursuant to Section 10.02 (Event of Default) of the Contract to remedy the breach, or to commence and continue correction of such breach with promptness and due diligence toward completion, the Owner may, without prejudice to any other right or remedy available to the Owner, and without terminating the Contract and relieving the CMAR from its obligations under the Contract, proceed to correct the breach, or applicable portion thereof, by any means or methods deemed appropriate (including use of the Owner's personnel).

b) If the Owner discovers during the course of the corrective action that the breach is greater or otherwise different from, but nevertheless related to, the breach described in the seven-day notice, then the greater or different breach shall be deemed to have been included in the original seven-day notice and the Owner may proceed with the corrective action without having to provide any additional notice to the CMAR.

c) If, after expiration of the seven-day notice period required pursuant to Section 10.02 (Event of Default) of the Contract, the CMAR proceeds to correct the breach and the Owner has already incurred certain expenses (such as, but not necessarily limited to, preparation of cost estimates or remedial plans and drawings, placement of material orders, demolition costs, rental costs, storage costs, trash removal expenses, utility expenses, scheduled commitments from contractors which cannot be canceled without the Owner incurring costs to the contractor, transportation costs of personnel or materials, and incurred cost of hiring technical personnel whether licensed or not) as part of an effort to remedy the breach, then the CMAR shall pay the Owner for such incurred expenses as provided herein.

d) If, after issuance of the seven day notice of the breach required pursuant to Section 10.02 (Event of Default) of the Contract, the Owner decides not to take any action to correct the breach or fails in the effort to correct the breach, the CMAR remains responsible for the breach and any expenses incurred in any failed effort to correct the breach.

e) In the event of a correction and expense as provided herein, the Contract Amount shall be reduced by the amount of the incurred expenses which amount the Owner shall be entitled to deduct from any payments then or thereafter due the CMAR (including the direct and indirect costs of using the Owner's personnel). If payments then or thereafter due the CMAR are not sufficient to cover the incurred expenses, the CMAR shall pay the difference to the Owner.

Section 10.06 Deduction From Progress Payments

a) For each and every breach set forth in Section 10.01 (Definition of Breach) of the Contract, the Owner may decline to certify, in whole or in part, any pending application for payment which, in the opinion of the Owner, may be necessary to protect the Owner from the damages and expenses which are expected to be incurred, or which have been incurred, as a result of the breach. Based upon the opinion of the Owner, the Owner may withhold from any requested progress payment such sum as may be necessary to protect the Owner from such damages and expenses including, but not necessarily limited to, the Liquidated Damages permitted pursuant to Section 6.01 (Owner's Recovery of Liquidated Damages) of the Contract which the Owner anticipates will occur as a result in the delay in the Completion of the Project.

b) If an agreement can be reached between the Owner and the CMAR concerning the request for payment, the CMAR may submit a revised application for certification. The Owner shall have the right to deny in whole or in part, or to require an adjustment to, any pending application if, as a result of new evidence or observations subsequent to the issuance of a previous certification, the Owner has determined that the amount paid exceeds the percentage of completion of the Work, the Work cannot be completed for the unpaid balance of the Contract or any other such certification was improperly issued.

c) If the CMAR remedies the failure for which payment has been withheld, and the Owner verifies such correction, then the withheld money shall be included with the payment of the next application.

Section 10.07 Rights and Remedies are Cumulative

Except as otherwise expressly stated in the Contract, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

SECTION 11. REPRESENTATIONS AND WARRANTIES

Section 11.01 General Representations and Warranties

The CMAR hereby represents and warrants that it (i) is familiar with requirements of the Contract; (ii) has investigated the site and is knowledgeable concerning the local conditions that may affect the performance of the Work; (iii) is satisfied that the Work can be performed and completed as required in the Contract; (iv) accepts all of the risks directly or indirectly connected with the performance of the Contract; (v) has not been influenced by any statement or promise other than those contained in the Contract Documents; (vi) is experienced and competent to perform the Contract; (vii) is familiar with all general and special laws, ordinances and regulations that may affect the Work, its performance, or those persons employed therein; (viii) is familiar with tax and labor regulations and with rates of pay that will affect the Work, and (ix) is properly licensed and will remain properly licensed by the CMARs Board of the State of Nevada in order to perform the Contract.

Section 11.02 Warranty of Merchantability and Fitness for Particular Purpose

The CMAR warrants that the equipment and materials used or provided as part of the Contract are of merchantable quality and fit for their particular purpose.

Section 11.03 Warranty Work Conforms with Requirements of the Contract

a) In addition to other warranties and longer time periods which may be provided in the Contract, and as a minimum, the CMAR warrants the Work performed under the Contract is in conformance with the requirements of the Contract, and that the Work is free of defects and deficiencies in design, materials and workmanship (unless furnished by the Owner) for a period of twelve (12) months from the date of the Certificate of Substantial Completion (or 12 months from the completion date of any portions of the Work first performed after Substantial Completion), regardless of whether the same were furnished or performed by the CMAR or by any of its Subcontractors of any tier. Upon receipt of written notice from the Owner of any non-conformance to the Contract during the applicable warranty period, the CMAR shall promptly correct the affected non-conformance at a time acceptable to the Owner.

b) The CMAR shall perform such tests as the Owner may require verifying that the Work is in compliance with the Contract. If such Work is not in accordance with the Contract, the costs of the correcting and testing, including the cost of removal necessary to gain access thereto and other related incidental costs, shall be borne by the CMAR. If such Work is found to be in accordance with the Contract, the costs of uncovering, replacement, and testing shall be

charged to the Owner. The CMAR warrants any corrected Work to be in conformance with the Contract for a period of twelve (12) months from the date of acceptance thereof. If the CMAR fails to promptly make the necessary corrections and tests, the Owner may perform or cause to be performed the same at the CMAR's expense. The CMAR and its Surety shall be liable for the satisfaction and full performance of the warranties set forth in this Section.

c) Unless otherwise provided elsewhere in the Contract, the materials and equipment incorporated into the Work shall be new and of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to the Owner.

d) Nothing contained in this Section shall be construed to establish a period of limitation with respect to the CMAR's obligations under the Contract other than specifically to correct the Work then known by the Owner to be in non-conformance with the Contract, including, but not limited to, defects and deficiencies in design, materials and workmanship (unless furnished by the Owner).

Section 11.04 Warranty Exclusions Prohibited

a) The Owner will not accept any warranty clause from the CMAR, Subcontractor or manufacturer that states:

i) That the implied warranties of Merchantability or Fitness for a Particular Purpose are excluded from the Contract;

ii) That the warranty clause is in lieu of all other warranties that are either expressed or implied.

b) In addition to the above restrictions, the warranty requirements of the Contract shall exist in a direct extension from the manufacturer to the Owner as well as from the CMAR to the Owner if the manufactured product is sold directly to the CMAR.

SECTION 12. DISPUTES BETWEEN THE PARTIES

Section 12.01 In General

Any claim, dispute or other controversy that may arise between the Owner and CMAR concerning any provision of this Contract shall be resolved through the good faith efforts of both parties. In accordance with NRS 338.150, if the claim, dispute or controversy cannot otherwise be settled, the parties shall use an alternate dispute resolution method before initiation of any judicial action. For purposes of this Contract, alternate dispute resolution shall mean non-binding mediation before an independent private mediator agreed to by the parties. If the parties cannot agree upon an independent private mediator within forty-five (45) days after notice of the claim is provided pursuant to Section 12.04 below, the party may proceed to file a judicial action with the Eighth Judicial District Court, Clark County, Nevada. The alternate dispute resolution proceedings shall take place in Clark County, Nevada, unless otherwise agreed to by the parties.

Section 12.02 Work to Proceed

While the alternate dispute resolution or judicial action is pending, the CMAR shall proceed with the Work and maintain progress in accordance with the requirements of the Contract, unless otherwise mutually agreed upon in writing.

Section 12.03 Alternate Dispute Resolution Costs and Fees

The fees and expenses of the alternate dispute resolution proceedings shall be equally shared by both parties. Each party is responsible for their own costs, expenses, consultant fees and attorney fees incurred in the presentation or defense of any claim, dispute or controversy that may arise between the parties.

Section 12.04 Notice of Disputes

In the event that a claim, dispute, or controversy arises between the parties which are related to the progress or construction of the Project, the party asserting the claim, dispute or controversy must provide written notice thereof to the other party within thirty (30) days after its occurrence. The written notice shall set forth with specificity the nature of the claim, dispute or controversy, the relief sought, and other matters properly relating thereto. The notification is important to the recipient of the notice so that proper measures can be taken to properly observe and record the progress of the Work, to properly document the impact that the claim, dispute or controversy may have thereon, and to enable that party to properly verify any costs incurred by the party asserting the claim, dispute or controversy in connection therewith. The failure of the party to provide proper notice to the other party as required herein shall forever bar that party from any

remedy thereon, including seeking any alternate dispute resolution and/or judicial action. The notice and time requirements set forth herein shall not apply to warranty claims or other construction defect claims that the Owner may have against the CMAR relating to the construction of the Work.

Section 12.05 Right of Judicial Action

Any claim, dispute, or other matter in question between the parties concerning any provisions of this Contract that cannot otherwise be resolved between the parties through the use of the alternate dispute resolution required herein and, in the case of the CMAR, which has not been waived by the acceptance of final payment, may be submitted for judicial action. Prior to the exercise of this right, the party seeking judicial relief shall have provided the other party thirty (30) days prior written notice before filing such judicial action.

SECTION 13. COMPLIANCE WITH THE LAWS

Section 13.01 General

The CMAR shall comply with all federal, state and local laws and regulations applicable to construction of the Work including, but not necessarily limited to, licensing requirements, labor and health laws, and requirements for the payment of sales and use taxes on equipment, materials and supplies provided in connection with the Contract.

Section 13.02 Compliance with Labor Laws

a) **Prevailing Wage Rate Law.** The CMAR and each Subcontractor shall comply with all federal, state and local labor laws with regard to minimum wages, overtime work, hiring and discrimination including, without limitation, NRS Chapter 338.

b) **Prevailing Wage Rates.** For public work projects whose cost is one hundred thousand dollars ($100,000) or more, the CMAR hereby acknowledges that pursuant to the provisions of NRS 338.040 and 338.050, any person who is employed by the CMAR or Subcontractor at the Work Site, or who performs work on a public work project (regardless of any contractual relationship alleged to exist between the workman and his other employer), is subject to the prevailing wage rate provisions of NRS 338.010 to 338.090, inclusive.

The CMAR is responsible for ensuring that the aforementioned persons are paid in accordance with the current prevailing wage rates approved by the State Labor Commissioner. Any Change Order causing a contract to equal or exceed one hundred thousand dollars ($100,000) will subject the Contract to the provisions of Prevailing Wage Rate Law and to audit by the State Labor Commissioner. Any work performed after regular working hours, or on Sunday or a legal holiday, shall be performed without additional expense to the Owner.

In accordance with NRS Chapter 338, the CMAR shall post the current prevailing wage rates and applicable addenda in a place generally visible to the workmen. The prevailing wage rates and applicable addenda are available from the office of the State Labor Commissioner (www.laborcommissioner.com). The CMAR agrees to investigate, or to assist in the investigation of, each claimed violation of the prevailing wage law as may be requested by the Owner or the State Labor Commissioner.

c) **Certified Payroll Reports.** Pursuant to NRS Chapter 338, any public work contract awarded for one hundred thousand dollars ($100,000) or more, the CMAR and each Subcontractor are required to:

i) Keep an accurate record showing the (1) name of worker, (2) occupation of the worker, (3) if the worker has a driver's license or identification card, an indication of the state or other jurisdiction that issued the license or card and (4) the actual per diem wages and benefits paid to each worker employed by them in connection with the Work. These records are referred to as the Certified Payroll Reports.

ii) Keep an additional accurate record showing, for each worker employed by the CMAR or Subcontractor who has a driver's license or identification card (1) the name of the worker, (2) the driver's license or identification card number of the worker, and (3) the state or other jurisdiction that issued the license or card.

iii) The CMAR, and each Subcontractor through the CMAR, is required to submit a copy of the Certified Payroll Reports for each calendar month to the Owner no later than fifteen (15) calendar days after the end of the month. The CMAR shall be responsible for coordinating the submittal of all the Certified Payroll Reports for the Project, including the reports of each Subcontractor who is performing Work on the Project. The Owner requires the use of LCP Tracker software for the submission of certified payrolls by the CMAR and all of its Subcontractors.

The CMAR agrees to contact the Nevada State Labor Commissioner with any question concerning the payment of prevailing wage rates.

d) **Penalties.** In accordance with NRS 338.060, the CMAR shall forfeit the penalty provided herein to the Owner for each calendar day or portion thereof that each workman employed on the Project (i) is paid by the CMAR or Subcontractor less than the designated wage rate for the work on the Project, (ii) the CMAR or Subcontractor willfully included inaccurate or incomplete information in the monthly Certified Payroll Report submitted to the Owner, (iii) the CMAR or Subcontractor did not report to the Owner as required pursuant to NRS 338.070, and/or (iv) if a violation of more than one provision of subsection (i) through (iii) herein involves the same workman, the CMAR shall forfeit the penalty set forth in each violated subsection.

The CMAR hereby stipulates that the Owner may withhold not less than twenty dollars ($20.00), nor more than fifty ($50.00) for each and every violation of subparagraphs (i) through (iii) herein, the actual amount of which is according to a sliding scale based on the size of the CMAR's business which is adopted by the State Labor Commissioner, except that for violation of subparagraph (iii) the maximum penalty is limited to one thousand ($1,000) for the first violation and five thousand ($5,000) for each subsequent violation occurring during the term of the Contract.

In addition to any penalty imposed by the Labor Commissioner, if the CMAR or Subcontractor is determined by the Owner to have violated the provisions of this Section, the Owner may deduct from any payments due the CMAR, the costs of the proceedings associated with the investigation of each wage complaint including, but not limited to, employee salaries, investigator fees and attorney fees.

In addition to any monetary penalty imposed by the statute, the CMAR, or its Subcontractor, agent or representative, performing Work on the Project who neglects to comply with the prevailing wage rate requirements of NRS Chapter 338 is guilty of a misdemeanor.

e) **Copeland Anti-Kickback Law**. The CMAR shall comply with the Copeland Anti- Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This Act provides that the CMAR or Subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that person is otherwise entitled.

f) **Fair Employment Law**. The CMAR shall comply with the fair employment provisions of NRS 338.125.

1) Discrimination:
The City of Las Vegas is committed to promoting full and equal business opportunity for all persons doing business in Las Vegas. The Contractor acknowledges that the City has an obligation to ensure that public funds are not used to subsidize private discrimination. Contractor recognizes that if the Contractor or their subcontractors are found guilty by an appropriate authority of refusing to hire or do business with an individual or company due to reasons of race, color, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin, or any other legally protected status, the City may declare the Contractor in breach of contract and terminate the Contract.

2) Fair Employment Practices
In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion national origin, sex, sexual orientation, gender identity or gender expression, age, disability, or any other legally protected status. Such agreement 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 Contractor further agrees to insert this provision in all subcontracts hereunder. Any violation of such provision by a Contractor shall constitute a material breach of this Contract.

g) **Preferential Employment. (This Section ☒ IS ☐ IS NOT Applicable to this Contract)** The CMAR shall comply with the preferential employment provisions of NRS Chapter 338.130. This law requires, in all cases where persons are employed in the construction of public works, preference must be given, when the qualifications of applicants are equal: First, to persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard, and are citizens of the State of Nevada; Second, to other citizens of the State of Nevada. If these provisions of NRS 338 are not complied with by the

CMAR engaged on the public work, the contract shall be void, and any failure or refusal to comply with any of these provisions of this section renders any such contract void..

h) **Federal Wage Rates. (This Section ☐ IS ☒ IS NOT Applicable to this Contract)** The CMAR shall comply that the Federal Wage Rates attached (*Attachment*) and incorporated herein as a part hereof which are applicable to the Contract. The wages paid under the Contract shall conform to the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29-CFR, Part 5). If the State Wage Rates and Federal Wage Rates are not equal, the CMAR shall pay the higher prevailing rate.

i) **Special Requirements. (This Section ☐ IS ☒ IS NOT Applicable to this Contract)** The CMAR shall comply with the requirements of (*Attachment*), incorporated herein as a part hereof, which are applicable to the Contract.

Section 13.03 Compliance with Americans with Disabilities Act

The Work shall comply with the (ADA) as amended to date. The CMAR shall construct the Work in compliance with the Americans with Disabilities Act and the rules and regulations promulgated thereunder and shall immediately notify the Owner of any conflicts between the Contract Documents and the Act or the rules and regulations promulgated thereunder.

Section 13.04 Compliance with Immigration Reform Control Act of 1986

In accordance with the Immigration Reform and Control Act of 1986, the CMAR shall not employ unauthorized aliens in the performance of the Contract.

Section 13.05 Air Pollution Control

a) Prior to commencing the Work, the CMAR shall obtain a permit from the Clark County Department of Air Quality and Environmental Management.

b) The CMAR shall perform the Work in a manner that does not discharge smoke, dust, or other air contaminants into the atmosphere from any source whatsoever, in violation of the laws, rules, and regulations of federal, state, and local government pertaining to air pollution including, but not necessarily limited to, the following:

   i) Nevada Revised Statute 445: Air Quality Regulations
   ii) Title 40 Code of Federal Regulations (CFR) Part 82 Protection of Stratospheric Ozone – Refrigerant Regulations
   iii) Adhering to all Clark County Department of Air Quality and Environmental Management regulations.

c) The CMAR shall not be granted any time extensions for delays due to compliance with or violations of the aforementioned laws, rules, or regulations; and shall pay all compliance costs and violation fines and penalties. Such imposed fines and penalties shall not result in an increase in the Contract Amount, and are not subject to reimbursement by the Owner.

Section 13.06 Fire Prevention

a) The CMAR shall conform to all federal, state, and local laws and regulations pertaining to burning, fire prevention, and control within or adjacent to the Work Site. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the CMAR.

b) All tarpaulins used for any purpose during construction of the Work shall be made of material resistant to fire, water, and weather and shall bear UL labels. Lighting of any fires on the Project Site is strictly forbidden.

c) The CMAR shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding or burning is conducted, inflammable materials shall be protected and a fire watch shall be provided by the CMAR to be present during the burning and welding operation to ensure that protective measures are taken and no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

Section 13.07 Provisions Required by Law

Each and every provision of Nevada Revised Statutes Chapter 338 and 624 and any other laws required to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or inserted incorrectly, then upon the application of either party, the Contract shall be amended to make such insertion or correction.

Section 13.08 Stormwater Pollution Control

a) Prior to commencing the Work, the CMAR shall obtain a National Pollutant Discharge Elimination System (NPDES) permit from Nevada Division of Environmental Protection (NDEP) for construction activities.

b) The CMAR shall perform the Work so as to not discharge stormwater runoff containing pollutants or sediment into the waters of the United States (including municipal separate storm sewer systems [MS4s]) in violation of federal and state laws, rules, and regulations and the City's water pollution requirements.

c) The CMAR shall:

   i) Comply with the provisions of Nevada Revised Statutes, Chapter 445A: Water Pollution Control and City of Las Vegas Municipal Code 14.18; and
   ii) Adhere to all Federal regulations under 40 CFR 122.26(b)(14).
   iii) Provide to the City, prior to commencing construction operations, copies of all associated Permits or waivers.

d) All information and forms pertaining to Nevada's Stormwater NPDES Permitting Program can be found on the following website: http://ndep.nv.gov/bwpc/storm01.htm.

e) The City, state, and federal regulations identified above are hereby incorporated by reference as preconditions of this Contract. The CMAR shall familiarize itself with these regulations and practices, and is advised that prior to engaging in any construction activities, the CMAR shall submit a Notice Of Intent (NOI) to the Nevada Division of Environmental Protection. A Storm Water Pollution Prevention Plan (SWPPP) must be completed prior to submission of the NOI and must remain on the Project site and be updated as necessary for the duration of the project. As applicant, the CMAR is responsible for insuring that all persons on the Project site, including contractor and subcontractor personnel, abide by the conditions of the permit. As the applicant, the CMAR is responsible for supplying complete copies of the NOI and SWPPP to all project subcontractors.

f) Upon completion of the Project, the CMAR must (at no additional cost to the Owner) permanently stabilize the construction area and file a Notice Of Termination (NOT) with NDEP to terminate the permit.

g) The CMAR shall not be granted any time extensions for delays due to compliance with or violations of the aforementioned laws, rules, regulations, and requirements and shall pay all compliance costs and violation fines and penalties. Such imposed fines and penalties shall not result in an increase in the Contract Amount, and are not subject to reimbursement by the Owner.

Section 13.09 Disposal of All Wastes (Hazardous, Toxic, and Non-Hazardous)

a) CMAR shall be responsible for disposal of all waste materials including non-hazardous, hazardous, or toxic materials. CMAR shall make its own arrangements for disposal or recycle of all waste materials and shall pay all costs associated with the proper disposal of all waste.

b) CMAR shall obtain written verification in terms of the landfill weight ticket, recycling certificate from the disposal site owner or operator with a written release from the disposal site owner or operator absolving the City of any and all responsibility in connection with the disposal of waste material on said property.

c) Unless otherwise provided, full compensation for all costs involved in disposing of materials as specified in this section, including all costs of hauling, shall be considered as included in the price paid for the Contract items of work involving such material and no additional compensation will be allowed therefore.

d) No waste material that is to be disposed shall be stockpiled on the City's property or the Project site longer than seven (7) days, unless otherwise approved by the City. Prior to initiating construction, the CMAR shall provide to the City a proposed temporary stockpile location. Construction debris and materials shall not be stockpiled in unapproved locations.

e) For hazardous or toxic materials waste, CMAR shall comply with all local, State, and federal regulations including but not limited to Resources Conservation and Recovery Act (RCRA), Toxic Substance Control Act (TSCA). CMAR must fill out the Waste Manifest and provide a copy of the Manifest to the City. CMAR (or its subcontractor) shall provide all necessary licenses or permits documentation for handling, transportation and disposal of hazardous or toxic materials as submittal information to the City. CMAR is responsible to identify/classify the hazardous waste, getting an EPA hazardous waste site number by filing the paperwork with NDEP as the hazardous waste generator, retaining certified RCRA hazardous waste transporter subcontractor, properly dispose the RCRA hazardous waste in certified hazardous waste treatment or landfill sites, deactivated the EPA hazardous waste site number when the job is done, and provide safe handling training to CMAR employees.

Section 13.10 Compliance with National Environmental Policy Act (NEPA)

If this contract is sponsored in whole or part through Federal funding, CMAR is required to comply with NEPA requirements including but not limited to, compliance with Clean Air Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, Migratory Bird Treaty Act, Resource Conservations and Recovery Act (RCRA), Toxic Substance Control Act (TSCA).

SECTION 14. CONTRACT INTERPRETATION

Section 14.01 General

a) **Governing Law.** The Contract shall be construed and enforced in accordance with the laws of the State of Nevada. Any action for the enforcement of any provision of this Contract shall be instituted in the County of Clark, State of Nevada.

b) **References Hereto.** The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Contract; and the term "hereafter" means after, and the term "heretofore" means before, the Contract Award Date.

c) **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

d) **Persons.** Words importing persons include firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

e) **Headings.** The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

f) **Entire Contract.** This Contract includes the requirements of the Plans and Specifications, the General Conditions and all appendices and clarifications thereto. Without limiting the generality of the foregoing, This Contract shall completely and fully supersede all other understandings and agreements among the Parties related to the execution of this Contract.

g) **Standards of Workmanship and Materials.** Any reference in this Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, Specifications, schedules, or otherwise) shall be construed to require the CMAR to furnish the same in accordance with the grades and standards therefore indicated in this Contract. Where this Contract does not specify any explicit quality or standard for construction materials or workmanship, the CMAR shall use only workmanship and new materials of a quality consistent with that of construction, workmanship and materials specified elsewhere in the Specifications, and the Specifications are to be interpreted accordingly.

h) **Technical Standards and Codes.** References in this Contract to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, City or society specified, all as in effect as of the Contract Award Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Specifications and (2) if any material revision occurs, to the CMAR's knowledge, after the Contract Date, and prior to completion of the applicable Work, the CMAR shall notify the Owner. If so directed in writing by the Owner, the CMAR shall perform the applicable Work in accordance with the revised professional and

technical standard, code, or specification as long as the Guaranteed Maximum Price is adjusted, subject to cost substantiation, for any additional cost or expense attributable to any such revision.

i) **Causing Performance.** A Party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such Party under this Contract.

j) **Party Bearing Cost of Performance.** All obligations undertaken by each Party hereto shall be performed at the cost of the Party undertaking the obligation or responsibility, unless the other Party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other Party or through an adjustment to the Guaranteed Maximum Price.

k) **Assistance.** The obligations of a Party to cooperate with, to assist or to provide assistance to the other Party hereunder shall be construed as an obligation to use the Party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted Party.

l) **Good Construction Practice.** Good Construction Practice shall be utilized hereunder, among other things, to implement, and in no event displace or lessen the stringency of, the Contract Specifications or Contract Standards. In the event that, over the course of the performance of this Contract, Good Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the CMAR, the CMAR shall be relieved of its obligation to comply with such evolved Good Construction Practice (but not the Good Construction Practice as of the Contract Award Date) unless the Owner agrees to adjust the Guaranteed Maximum Price on a cost-substantiated basis, as appropriate, to account for such additional costs. Except to the extent that the CMAR is relieved of its obligation to comply with such evolved Good Construction Practice, as provided above, in no event shall any evolution of Good Construction Practice, or any Owner election to pay or not pay any such additional costs, relieve the CMAR of its obligations hereunder.

m) **Applicability and Stringency of Contract Standards.** The CMAR shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the CMAR hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

n) **Delivery of Documents in Digital Format.** In this Contract, the CMAR is obligated to deliver reports, records, proposals and other documentary submittals in connection with the performance of its duties hereunder. The CMAR agrees that all such documents shall be submitted to the Owner both in printed form (in the number of copies indicated) and, at the Owner's request, in digital form. Digital copies shall consist of computer readable data submitted in Adobe PDF format which the Owner may reasonably request to facilitate the administration and enforcement of this Contract. If drawings, native AutoCAD files should be submitted unless an alternate format is requested by the Owner. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern. The Owner uses the Microsoft Office Suite of software and Primavera Expedition for contract administration

o) **Drafting Responsibility. Neither Party** shall be held to a higher standard than the other Party in the interpretation or enforcement of this Contract as a whole nor any portion hereof based on drafting responsibility.

p) **No Third-Party Rights.** This Contract is exclusively for the benefit of the Owner and the CMAR and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

q) **References to Include.** All references to "include" or "including" herein shall be deemed to be followed by the words "but not be limited to" or "without limitation" or words of similar import.

Section 14.02 Intent and Correlation

The Contract is intended to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one portion or section of the Contract shall be as binding as if required by all. Any work not covered in the Contract will not be required unless it is consistent with the Contract Documents, and it is reasonably inferable or necessary to produce the intended results or provide a complete work. Words and abbreviations, which have well known technical or trade meanings, are used in the Contract Documents in accordance with such recognized meanings.

Section 14.03 Governing Order of Contract Documents

The Contract Documents include various divisions, sections, and conditions, which are essential parts for the work to be provided by the CMAR. In case of discrepancy, the lower number document will govern over the higher numbered document according to the following order of precedence, unless to do so would contravene the intent of the Contract Documents as determined by the Owner:

i) Change Orders

ii) Addenda, with those of later date having precedence over those of an earlier date

iii) Owner-CMAR Agreement

iv) General Conditions

v) Special Provisions, Drawings and Referenced Standards (these documents are to be construed together in determining the intent of the Owner)

Section 14.04 Conflicting Conditions

In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the CMAR shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Owner's interpretation.

Section 14.05 Graphic Enhancement

Graphic enhancement of any text of the Contract such as bolding, underlining, italics, etc. is added for ease of reference and shall not be interpreted as placing additional importance on the enhanced text or lessening the importance of text without such enhancement.

SECTION 15. MISCELLANEOUS PROVISIONS

Section 15.01 Regulatory Authorities

a) The CMAR does hereby acknowledge and agrees that the Department of Public Works, by or through its Architectural Services Division, acting as the Owner's Designated Representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of regulatory authorities which are separate from the Owner, or which are departments of the Owner including, but not limited to, the Building Department, Fire Department, Planning Department or other divisions within the Department of Public Works acting in a regulatory manner. The CMAR is responsible for complying with the requirements imposed by the regulatory authorities (including the departments of the City acting in a regulatory manner) and any delays resulting to the CMAR in the performance of the Contract from having to comply with such requirements are solely the responsibility of the CMAR, and not attributable in any manner to the Owner.

b) The Owner's Designated Representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the Owner's Designated Representative does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the Owner's Designated Representative. The CMAR agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the Owner's Designated Representative, and that the CMAR's interaction with each regulatory authority is to be conducted without assistance from the Owner's Designated Representative.

Section 15.02 Subcontracts

a) Any subcontract entered into by the CMAR and its Subcontractor or material Supplier shall not create any contractual relationship between the Owner and the Subcontractor or material Supplier. It is the CMAR's responsibility to ensure all subcontract agreements and material supply contracts comply with the term and conditions set forth in this Contract and applicable Statutes

b) The CMAR agrees to provide a copy of each subcontract (including contracts for the purchase of supplies) entered into by the CMAR in connection with the Project if so requested by the Owner for any of the reasons set forth in NRS 338.140 (1)(d).

c) The CMAR shall not substitute a Subcontractor for any portion of the Work which was previously indicated would be performed by the CMAR unless such substitution meets the requirements of NRS Chapter 338.

d) If the CMAR submitted with its proposal a signed and notarized Affidavit and received a preference in bidding, the contract between the CMAR and Subcontractor and each contract between a subcontractor and a lower-tier subcontractor must provide that;

(i) If a party to the contract causes the CMAR to fail to comply with the requirements of the Affidavit, the party is liable to the Owner for a penalty as defined by statute:

(ii) The right to recover the amount determined pursuant to paragraph (a) by the Owner may be enforced by the Owner directly against the party that causes the failure to comply; and

(iii) No other party to the contract is liable to the Owner for a penalty.

Section 15.03 Audit of Records

a) The CMAR agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the CMAR goes out of business, the CMAR shall forward the books and records to the Owner to be retained by the Owner for the period of time required herein.

b) The Owner, or its Designated Representative(s), shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the CMAR pertaining to the performance this Contract during normal business hours. The Owner will provide prior written notice to the CMAR of the audit and inspection. If the books and records are not located within Clark County, the CMAR agrees to deliver them to the Owner, or to the address, designated by the Owner, within Clark County. In lieu of such delivery, the CMAR may elect to reimburse the Owner for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the CMAR's office. If the books and records provided to the Owner are incomplete, the CMAR agrees to remedy the deficiency after written notice thereof from the Owner, and to reimburse the Owner for any additional costs associated therewith including, without limitation, having to revisit the CMAR's office. The CMAR's failure to remedy the deficiency shall constitute a material breach of this Agreement. The Owner shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Section.

c) If, at any time during the term of this Contract, or at any time after the expiration or termination of the Contract, the Owner or the Owner's Designated Representative(s) finds the dollar liability is less than payments made by the Owner to the CMAR, the CMAR agrees that the difference shall be either: (a) repaid immediately by the CMAR to the Owner or (b) at the Owner's option, credited against any future billings due the CMAR.

Section 15.04 Independent Contractor

The CMAR represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such Work. The CMAR shall act as an independent contractor and not as an agent of the Owner in performing the Contract. The CMAR shall maintain complete control over its employees and all of its subcontractors. Nothing contained in the Contract or any subcontract awarded by the CMAR shall create any contractual relationship between any such subcontractor and the Owner. The CMAR shall perform the Work in accordance with its own methods subject to compliance with the Contract.

Section 15.05 Severability

The invalidity, illegality, or unenforceability of any provision of the Contract or the occurrence of any event rendering any portion or provision of the Contract void shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract, and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion of provision held to be void. The parties further agree to amend the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent the entire Contract from being void should a provision which is of the essence of the Contract to be determined void.

Section 15.06 Assignment of Contractual Rights

The CMAR shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same, or any part thereto.

Section 15.07 Ownership and Use of Documents

The Drawings and Special Provisions are and shall remain the Owner's property unless a consultant is used in the preparation of the Contract Documents in which case ownership shall be according to the agreement between the Owner and the Consultant. They are to be used only with respect to the Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements for other purposes in connection with the Project is not to be construed as infringement of the copyright of the Owner's or Consultant's common law or other reserved rights.

Section 15.08 Prohibited Interests

No official of the Owner, who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in the Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the Owner, who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in the Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

Section 15.09 Waiver

No waiver of any breach or failure to enforce any of the terms, conditions or covenants of the Contract shall be construed to be a waiver of any succeeding breach of the same or similar provision of the Contract.

Section 15.10 No Personal Liability

No official, officer, employee or agent of the Owner shall in any way be personally liable or responsible for any covenant or agreement herein contained, whether expressed or implied, or for any statement, representation or warranty made in connection with the Contract.

Section 15.11 Contract Modification

The Contract represents the entire and integrated agreement between the Owner and the CMAR and supersedes prior negotiations, representations or agreements, either written or oral, made by either party. The Contract may only be amended by a Modification.

Section 15.12 Required Reporting for Bidder's Preference on Public Work Projects

a) In accordance with NRS 338.0117 for contracts awarded as the result of the bidders preference being received,, CMAR shall maintain, and submit as required, the reports as indicated in this Section 15.12. It is the CMAR's responsibility to maintain, documentation required to substantiate the information provided in the reports, including information for all Subcontractors on the Project.

b) At least 50 percent of the workers employed on the Project, including, without limitation, any employees of the CMAR and of any Subcontractor engaged on the Project, will hold a valid driver's license or identification card issued by the State of Nevada Department of Motor Vehicles ("DMV");

i) The CMAR shall keep or cause to be kept, for both the CMAR and all Subcontractors, an accurate record showing, for each worker employed by the CMAR or Subcontractor in connection with the Project:

1) The name of the worker;

2) The occupation of the worker;

3) If the worker has a driver's license or identification card, an indication of the state or other jurisdiction that issued the license or card; and

4) The actual per diem, wages and benefits paid to the worker.

ii) An additional accurate record showing, for each worker employed by the CMAR or Subcontractor in connection with the public work who has a driver's license or identification card;

1) The name of the worker;

2) The driver's license number or identification card number of the worker; and

3) The state or other jurisdiction that issued the license or card.

iii) The records maintained pursuant to paragraph (i) above must be must be open at all reasonable hours to the inspection by the Owner and the public as provided by NRS 239.010. The CMAR engaged on the Project shall ensure that a copy of each record for each calendar month is received by the Owner no later than fifteen 15 days after the end of the month. The copy of the record maintained pursuant to paragraph (ii) is confidential and **not open** to public inspection. The CMAR shall maintain the records for a minimum of two years after final payment is received from the Owner.

c) All vehicles used primarily for the Project will be:

i) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the DMV pursuant to NRS 707.826; or

ii) Registered in the State of Nevada;

1) The CMAR shall keep or cause to be kept, for both the CMAR and all Subcontractor vehicles primarily used on the Project, an accurate record, updated monthly, showing a listing of vehicles being used on this Project. The list must include the Nevada State license plate number and registration information for both General CMAR and Subcontractors vehicles.

2) The records maintained pursuant to paragraph must be open at all reasonable hours to the inspection by the Owner and the public as provided in NRS 239.010. The CMAR shall maintain the records for a minimum of two years after final payment is received from the Owner.

d) If applying to receive a preference in bidding pursuant to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a t least 50 percent of the design professionals working on the Project, including, without limitation, employees of the Design-Build team and of any Subcontractor engaged on the Project, will have a valid driver's license or identification card issued by the State of Nevada DMV;

1. The CMAR shall keep or cause to be kept, for design professionals employed by either the CMAR and all Subcontractors, an accurate record, updated monthly, of the following information:

1) The name of the design professional;

2) The state or other jurisdiction that issued the license or card

3) The drivers' license number of identification card number of the design professional; and

2. The records maintained pursuant to paragraph (i) subsection (1) and (2) must be open at all reasonable hours to the inspection by the Owner and the public as provided in NRS 239.010. The copy of the record maintained pursuant to paragraph (i) subsection (3) is confidential and not open to public inspection. The CMAR shall maintain the records for a minimum of two years after final payment is received from the Owner.

e) The CMAR and any Subcontractor engaged on the Project will maintain and make available for the inspection within this State his or her records concerning payroll relating to the Project.

Section 15.13 Owner's Recovery of Bidders Preference Penalties

(a) If the Owner determines that the CMAR has failed to comply with a requirement certified in its Public Works Bidders Preference Affidavit the Owner may seek to recover by civil action penalties for failure to comply in the amount defined by statute.

(b) If the CMAR submitted with its Proposal a signed and notarized Affidavit receives a preference in bidding and is awarded the construction contract, the contract between the CMAR and Owner must provide that;

(i) If a party to the contract causes the CMAR to fail to comply with the requirements of the Affidavit, the party is liable to the Owner for a penalty as defined by statute:

(ii) The right to recover the amount determined pursuant to paragraph (a) by the Owner may be enforced by the Owner directly against the party that causes the failure to comply; and

(iii) No other party to the contract is liable to the Owner for a penalty.

Section 15.14 Counterpart Signatures

This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

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CLV-D&E, PHASE I-SECURITY UPGRADES
CMAR
SCHEDULE OF VALUES

SLETTEN CONSTRUCTION OF NEVADA
5825 SOUTH POLARIS
LAS VEGAS, NV 89118

A	B	C	D	E	F	G		H	I
			WORK COMPLETED						
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATION (E & F)	THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
10000	CMAR General Conditions	$167,497.00	$0.00	0.00		0.00		$ 167,497.00	$ -
12200	Bond	$6,685.00	$0.00	0.00		0.00		$ 6,685.00	$ -
12240	Liability Insurance	$5,325.00	$0.00	0.00		0.00		$ 5,325.00	$ -
12350	Permits & Fees	$8,500.00	$0.00	0.00		0.00		$ 8,500.00	$ -
17000	CMAR Contingency	$36,000.00	$0.00	0.00		0.00		$ 36,000.00	$ -
18000	CMAR Fee	$56,795.00	$0.00	0.00		0.00		$ 56,795.00	$ -
20000	Demo	$2,283.00	$0.00	0.00		0.00		$ 2,283.00	$ -
64023	Move Office Furniture	$2,229.00	$0.00	0.00		0.00		$ 2,229.00	$ -
75500	Roof Patching	$8,070.00	$0.00	0.00		0.00		$ 8,070.00	$ -
79200	Security/Fire Caulking	$1,000.00	$0.00	0.00		0.00		$ 1,000.00	$ -
81101	Hollow Metal Frame/Door/Hardware	$2,306.00	$0.00	0.00		0.00		$ 2,306.00	$ -
92900	Framing/Drywall/Ceiling/Paint Conduit	$19,717.00	$0.00	0.00		0.00		$ 19,717.00	$ -
96519	Rubber Base	$258.00	$0.00	0.00		0.00		$ 258.00	$ -
104400	Room Signage	$138.00	$0.00	0.00		0.00		$ 138.00	$ -
104416	Fire Extinguisher & Cabinet	$195.00	$0.00	0.00		0.00		$ 195.00	$ -
210000	Fire Sprinklers	$4,250.00	$0.00	0.00		0.00		$ 4,250.00	$ -
230000	HVAC Ductwork/Equipment	$31,605.00	$0.00	0.00		0.00		$ 31,605.00	$ -
230001	HVAC Test & Balance/Commissioning	$2,919.00	$0.00	0.00		0.00		$ 2,919.00	$ -
230002	HVAC Support Steel & Fireproofing	$5,368.00	$0.00	0.00		0.00		$ 5,368.00	$ -
260000	Electrical	$364,309.00	$0.00	0.00		0.00		$ 364,309.00	$ -
270000	Tele/Data	$303,602.00	$0.00	0.00		0.00		$ 303,602.00	$ -
283111	Fire Alarm	$2,403.00	$0.00	0.00		0.00		$ 2,403.00	$ -
312200	Site Trench/Backfill	$62,414.00	$0.00	0.00		0.00		$ 62,414.00	$ -
321216	Demo/New Pavement/Striping	$80,329.00	$0.00	0.00		0.00		$ 80,329.00	$ -
400001	Misc Excavation	$15,000.00	$0.00	0.00		0.00		$ 15,000.00	$ -
400002	Misc Wall Patch	$3,500.00	$0.00	0.00		0.00		$ 3,500.00	$ -
	TOTALS	$1,192,697.00	$0.00	$0.00	$ -	$ -	0.00%	$ 1,192,697.00	$ -

Sletten CONSTRUCTION • DESIGN BUILD COMPANIES
LAS VEGAS • PHOENIX • GREAT FALLS • BOISE • CODY

CLV-D&E, SECURITY UPGRADES
CLARIFICATIONS: 2-20-14 GMP

General Clarifications

1	GMP is based on plans and specifications dated 12-11-13 and Addenda #1-4 as issued during the bidding process unless noted otherwise.
2	GMP may need to be adjusted once all permit review has been completed and comments can be incorporated by Addenda. Pricing will be determined at the time of issue of all permit review comments, but assumptions have been made to provide complete scopes.
3	GMP excludes all FF & E (furnishings, fixtures and equipment) for all areas.
4	GMP does not include LEED design/construction standards.
5	GMP includes allowance for permits and fees pertaining to dust control, fire alarm and fire protection.
6	GMP includes allowances for misc site excavation and misc wall patching for unforseen conditions.
7	GMP does not include management of separate Stanley Security work, but will coordinate as needed.
8	GMP excludes demo of existing casework at MDF room.
9	GMP is for normal working hours Monday - Friday
10	Escorts to be provided by CLV-D&E as needed
11	GMP includes one site office box in fenced yard to the north of units 5 and 6 as confirmed during the site walk

General Conditions

1	Construction is a 5 month duration from beginning of construction through substantial completion
2	Owner is to provide temporary power during construction (cost for supply only)
3	Owner provides own site office and supplies if needed
5	Owner will be responsible for all 3rd party testing lab and inspection fees
6	Owner is to carry all cost of building permits, plan check fees, development fees, and any special system permit fees (Sletten will cover dust permit, storm water permit, and fire alarm and fire sprinkler deferred submittal permits)
7	Owner is responsible for all Utility assesment and connection or usage fees (cable, phone, power)
8	Labor is based on Clark County (2014) Prevailing wages
9	Sletten is carrying Liability and Worker's Comp Insurance. Builders Risk Insurance is by Owner
10	Sletten is carrying a 100% Payment & Performance Bond for total project cost
11	Sletten has included 100% Payment & Performance Bonding from mechanical and electrical subcontractors

Demo

1	Inlcudes demo of in-building wire back to building entry
2	Exterior conduit/cable to be abandoned in-place

Concrete

1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes any curb & gutter replacement as needed at new trench locations. All replacement to be cut and patched at trench location only

GMP ALLOWANCES AND QUALIFICATIONS & CLARIFICATIONS

Masonry	
1	Includes only patch work required at penetrations of new work
2	Does not include demo of wall between UPS room and new Stanely equipment room in Program/Visitation
Steel	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes structural steel support angles and fireproofing of these angles at the added rooftop unit
Wood & Plastics	
1	Includes move and move back of furniture as required for the new tele/data work
Thermal & Moisture Protection	
1	Includes all roof patching and sealing as required at new work roof penetrations
2	Includes all security sealants and fire-caulking as required at new work wall penetrations
Openings (Doors and Windows)	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes 3'-0" wide door into Stanley's equipment room
3	Includes hardware for new door unless D&E to provide their own
Finishes	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes hard lid in program/visitation new corridor
3	Includes painting of all exposed new site conduit on vertical/exposed walls only
4	Includes removal of drop ceiling in existing UPS room and left open to structure above with ceiling structure to be painted
5	Includes rubber base on new wall
Specialties	
1	Includes 1 new fire extinguisher and cabinet in Stanley equipment room
Fire Supression	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Tamperproof heads at inmate accessible areas only
3	Sprinkler system is a design-build system based on code and local AHJ approvals
4	Includes 1 new head at new Stanley equipment room and rework of existing heads in UPS room
HVAC	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Added units are stand alone systems not connected to existing building automation systems
3	Includes a complete Test and Balance procedure and certified report
4	Does NOT include costs for a 3rd party Commissioning Agent

Electrical	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes traffic rated pullboxes
3	Includes removal of existing cable in Culinary bldg that feeds the existing security devices.
Communications	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes adding devices to the existing Fire Alarm System that are required for the new Mechanical Units. Also being provided are the required devices for the new room located in the Program/Visitation Building. The Existing facility's Fire Alarm System may not meet current codes and may not be recognized as "serviceable" by the AHJ. Any further upgrades, changes or modifications to the Fire Alarm System that the AHJ may require for this project are NOT included. The existing Fire Alarm System must also be fully functional and free of troubles in order for the system to test out.
Security Electronics	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes cabling and terminations for new Stanley devices as shown on the Harris Engineers drawings
3	Does NOT include SEC smarts and parts
Earthwork	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes all required excavation and backfill at new electrical underground runs
Exterior Improvements	
1	Per plans and specifications dated 12-11-13, and bid addenda #1-4
2	Includes all required pavement demo and new paving as needed at new electrical underground runs. Sawcut joints will remain visible
Project Alternates	
1	Includes reuse of conduit in buildings for new tele/data systems and will require down time at each device
2	Includes alternate routing of electrical underground as approved by the electrical engineer. This will decrease the amount of earthwork and paving work required by allowing the conduit to be surface mounted to the buildings and run along building rooftops. See attached sketch along with cable manufacturers warranty letter

Key Personnel List

Project Executive: Tony Ewalt

Project Manager: Dan Eden

Project Superintendent: Josh Guisti

Project Administrator: Lea Bales

Project Safety Director: Matt Replogle

1 % Cost of Work List:

Specialty	Company	Address	Phone	License
HVAC	Bombard Mechanical	3933 West Ali Baba Las Vegas, NV 89118	(702) 940-4822 (702) 940-4833 (Fax)	#54546 #54547
Electrical	Mojave Electric	3755 W. Hacienda Ave Las Vegas, NV 89118,	(702) 798-2970	#19512