

GENERAL CONDITIONS

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SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS

These General Conditions encompass provisions that apply, and are incorporated into all construction contracts entered into by the Owner, unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CMAR), and Guaranteed Maximum Price (GMP) Cost-Based.

SECTION 2 — GENERAL DEFINITIONS

Note: The definitions below are in addition to the specific definitions in the solicitation(s) and/or contract(s) which these General Conditions apply. Additional definitions of terms that only have application to contracts involving Guaranteed Maximum Price (GMP) and Cost-Based Contracts, Change Orders are found in Section 15.1 below; and additional definitions of terms that only have application to contracts involving Pre-Construction Services are found in Sections 17.1 below.

2.1. Change Order – A written instrument issued after execution of the Contract Documents signed by Owner and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

2.2. City or Municipality– City of Avondale, a municipal corporation.

2.3. Construction Manager at Risk (CMAR) – The person or business entity with whom Owner has entered into an agreement for construction management to provide pre-construction and/or construction services and/or work in relation to the Project at issue. As used in these General Conditions, the term Contractor includes and applies to CMAR.

2.4. Consultant – A person or firm that provides professional services.

2.5. Contingent Bid Items – This is a minor bid item which is likely, but not certain, to occur during the course of work. If the Engineer determines that this work is required, the Contractor will accomplish the work and payment will be made based on the contingent unit bid price included in the proposal. Since the quantity listed in the proposal is primarily for bid comparison, the amount of work required by the Engineer may vary materially from this.

2.6. Contract – The written agreement executed between Owner and Contractor, including all of the Contract Documents.

2.7. Contract Documents – The documents which together form the Contract between Owner and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, any Notice to Proceed, the RFP (if applicable), , the Plans and Specifications, Project Schedule, written and properly executed Change Orders, MAG Specifications and Owner’s amendments thereto, and any other documents so designated in the Contract.

2.8. Contract Price – The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

2.9. Contract Time(s) – The number of calendar days or the dates related to the applicable phase, Substantial Completion, and/or Final Acceptance as stated in Contract Documents. The Contract Time is set forth in the Contract, and is based upon the Project Schedule agreed to by Owner in writing.

2.10. Contractor – The person or business entity with whom Owner has entered into an agreement for construction related work or services in relation to the Project at issue. As used in these General

Conditions, the term Contractor includes and applies to CMAR under contract with Owner to provide pre-construction and/or construction services.

2.11. Contractor Payment Request – The form that is accepted by Owner and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or Owner.

2.12. Construction Documents – The plans, specifications, and drawings prepared and issued by the Design Professional and approved by Owner for construction, meaning the documents are sealed by the Design Professional (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by Owner prior to incorporation into the Contract.

2.13. Critical Path – Critical path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of Owner.

2.14. Critical Path Method (CPM) - A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. Typically, activities are arranged in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

2.15. Day Calendar day(s) unless otherwise specifically stated in the Contract Documents.

2.16. Design Professional – The qualified, licensed person, firm or corporation who furnished design services required under the Contract Documents to include, but not limited to: development of the Construction Documents, review of Contractor Submittal(s), response to Request for Information, approval and certification of progress payment applications, construction administration, Substantial Completion, and Final Acceptance and Completion, if so designated.

2.17. Differing Site Conditions – Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the Site. Caliche, rock, hard-digging or sandy/silty soil encountered on a project is not considered a “Differing Site Condition.”

2.18. Final Acceptance – The Owner’s acceptance of the facility or project from the Contractor after all Work is completed, tested, and inspected in accordance with the contract requirements. Final Acceptance results in a Letter of Acceptance (LOA).

2.19. Final Completion – When the Contractor has achieved full and final completion of the Project as defined in the Contract Documents and Owner has delivered to Contractor the written Final Acceptance of the Project. See Section 6.4 below.

2.20. Float – The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to Owner.

2.21. Laws, Regulations, or Legal Requirements - Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of a Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project, dust control, hazardous materials, historical and environmental preservation, demolition, excavation, safety, employment, discrimination, ADA, building codes, zoning, and notice.

2.22. Line Item – The individual elements of Work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of the Work. Also refers to individual items of work within the Schedule of Values.

2.23. Liquidated Damages – Designated damages for the Owner to collect as compensation upon a specific breach (example: late delivery).

2.24. MAG Specifications – The latest revision of the latest edition adopted by the Municipality of the Uniform Standard Specifications for Public Works Construction published by MAG.

2.25. MAG Standard Details – The latest revision of the latest edition adopted by the Municipality of Uniform Standard Details as published by MAG.

2.26. Municipality or City – City of Avondale, a municipal corporation.

2.27. Notice to Proceed (NTP) – A written notice given by Owner to Contractor fixing the date on which Contractor will start to perform Contractor’s obligations under the Contract.

2.28. Owner – The person, persons, entity and/or entities designated as the “Owner” in the solicitation(s) and/or Contract(s) to which these general conditions apply.

2.29. Project – The Project specified in the Contract (including a Job Order).

2.30. Project Manager – The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by Owner. The Project Manager has the authority to act on behalf of Owner, as delineated and limited by the Contract Documents and applicable law. Owner shall communicate with Contractor through the Project Manager. The Project Manager has no authority to bind Owner or City Council in contravention of any City code, State or Federal statute or regulation, or these General Conditions.

2.31. Project Schedule – The schedule for the completion of the Project agreed to and/or required by Owner and incorporated into the Contract.

2.32. Project Team – The Project Team consisting of the Design Professional, Contactor, Project Manager, and such others as Owner may designate.

2.33. Proposal – A Proposal submitted to the Owner by a Contractor, CMAR, Design Professional or Design-Builder in response to an Invitation for Bids,(IFB), a Request for Qualifications (RFQ), a Request for Proposals (RFP) or other solicitation or request by the Owner. Proposals may be Fixed Price, Guaranteed Maximum Price (GMP), Unit Price, or other form as required or requested by the Owner.

2.34. Quality Assurance (QA) Testing – Testing performed to verify the accuracy and applicability of the QC testing results and to ascertain that the materials installed meet the specified levels of quality in accordance with the Contract Documents.

2.35. Quality Control (QC) Testing – Testing performed to assure that the materials installed comply with the requirements in the Contract Documents.

2.36. Requests for Information (RFIs) – Formal written request from Contractor to Owner and/or Contractor for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. Owner may require RFIs to be submitted on a specific form or in a specified format.

2.37. Schedule of Values (SOV) – The specified document prepared by Contractor, and approved and accepted by Owner, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

2.38. Scope of Work – The scope of work agreed to and/or required by Owner and incorporated into the Contract.

2.39. Shop Drawings – All drawings, diagrams, schedules and other data specifically prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

2.40. Site – The physical location of the Project and any ancillary or adjacent areas to be utilized by Contractor and/or Town in relation to the Project, including storage and/or staging areas, and construction easements.

2.41. Special Provisions – Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D of the Contract.

2.42. Specifications – The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. Where specified, the Project shall be constructed using the current Uniform Standard Specifications and Details for Public Works Construction as furnished by the Maricopa Association of Governments, as amended by Owner.

2.43. Subconsultant – A person, firm or corporation having a Contract with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

2.44. Subcontractor – An individual or firm having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any.

2.45. Substantial Completion – The date when the Owner determines that the Work (or separable units of Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for use by the Owner for its intended purpose, opening to the general public, full occupancy or use by Owner (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories, and similar elements are installed in the proper manner and in operating condition, inspected, and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning site work complete permanent heating, ventilation, air conditioning, vertical transportation, and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion.

2.46. Total Float – Number of Days by which the pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.

2.47. Work – The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

SECTION 3 — STANDARD SPECIFICATIONS AND DETAILS

3.1 Municipality operates under the latest revision of the MAG Specifications and MAG Standard Details, as may be amended by Municipality. Municipality's current effective amendments, if any, to the MAG Specifications and/or MAG Standard Details may be accessed from Municipality's Web site at www.avondaleaz.gov:

3.2 Copies of the MAG Specifications and MAG Standard Details are available at the Maricopa Association of Governments' office, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona. They may also be downloaded at their Web site: <http://www.mag.maricopa.gov> under "Publications."

3.2 The applicable MAG Specifications and Standard Details and Municipality's amendments thereto are incorporated into the Contract.

SECTION 4 — CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES

4.1 General

4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in the Contract to the satisfaction of Owner, exercising the degree of professional care, skill, diligence, quality and judgment that a professional Contractor engaged, experienced and specializing in the construction of construction and/or facilities of similar scope, function, size, quality, complexity and detail in areas throughout the United States comparable to the Municipality would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license Laws, Regulations, or Legal Requirements, including all requirements with respect to being duly registered and licensed.

4.2 Contractor's Pre-Contract and Pre-Work Deliverables

4.2.1 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to Owner the items listed in Sections 4.2.2 and 4.2.3 below, and the Contract must be executed by Owner. Failure to do so will be a material breach of the Contract could result in Owner: (i) declaring Contractor in default and collecting on Contractor's bid bond, or performance bonds as appropriate; (ii) suspending and/or debaring Contractor; and/or (iii) terminating the Contract for Cause and recovering damages from Contractor therefore.

4.2.2 Signed Contract. When Contractor delivers a signed Contract to Owner, Contractor shall also deliver to Owner such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by Owner) required under Section 11 of these General Conditions, and as the Contract requires.

4.2.3 Government Approvals and Permits. Contractor shall obtain all necessary permits for the Work and pay all applicable fees, unless otherwise noted on the plans and in the specifications. For bidding purposes, an allowance for all permit fees is included in the bid schedule under the item "allowance for permit fees." The Contractor shall be paid for the actual cost of the permit fees upon submitting a receipt showing the fee Contractor has paid. Excluded from the above allowance are items such as all costs incurred by the Contractor in securing the permit except for the actual permit fee established by the agency, cost for all shut downs or outages, cost for pole bracing, cost of permits for construction water, cost of construction water, cost for any additional insurance requirements, cost for any licenses, and other similar type costs. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits and the associated notices must be provided to Owner prior to starting the permitted activity.

4.2.4 Workmen's Compensation Insurance. As evidence of Workmen's Compensation Insurance, Contractor shall provide a letter of certification from the Industrial Commission of Arizona that Contractor is insured by the State Compensation Fund or is an authorized self-insurer, or a certificate of insurance issued by an insurance company authorized by the Insurance Department of Arizona to write Workmen's Compensation and Occupational Disease Insurance in the State of Arizona.

4.3 Pre-Construction Conference

4.3.1 Prior to the commencement of any Work, Owner will schedule a Pre-Construction Conference.

4.3.2 The purpose of this Conference is to establish a working relationship between Owner, Contractor, the utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

4.3.3 Minimum attendance by Contractor at any mandatory meeting with Owner shall be (1) Contractor's Representative, who is authorized to execute and sign documents on behalf of the firm, (2) Contractor's on-site Superintendent, and (3) Contractor's Safety Officer, or other employee responsible for safety.

4.4 Performance of the Work (including Field Measurements, Subcontractors, and Suppliers)

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, safety, sequences and techniques of construction.

4.4.3 Contractor's Superintendent shall be present at the Site at all times that material Work under this Contract is taking place. Contractor's Superintendent or designee shall be present at the Site at all times any other Work under this Contract is taking place.

4.4.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

4.4.3.2 In the event of any noncompliance with this Section 4, Owner may require Contractor to stop or suspend the Work in whole or in part.

4.4.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

4.4.5 Before starting the Work, Contractor shall carefully study and compare the various plans, drawings, other Contract Documents, and specifications relative to that portion of the Work as well as the information furnished by Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. The exactness of grades, elevations, dimensions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by Owner.

4.4.6 Before ordering materials or doing Work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.9 If Contractor observes error, discrepancies or omissions in the Contract Documents, it shall promptly notify the Design Professional and Owner and request clarification. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to Owner, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk and shall be liable to Owner for damages resulting from proceeding without clarification.

4.4.10 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to Owner.

4.4.11 Contractor shall establish and maintain all construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State or Arizona.

4.4.12 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.13 Contractor shall coordinate the activities of all Subcontractors. Contractor shall coordinate performance of the Work with Owner and applicable departments or agencies within City, the Design Professional and other contractors or parties involved in the Project. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Contractor agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

4.4.14 Contractor shall insure that all employees performing any Work for which Contractor is responsible have a legal right to live and work in the United States. Upon request by Owner, a copy of the Birth Certificate, Immigration and Naturalization Card, or Special Entry Permit shall be provided to the Owner. In addition, all compensation of any such employee shall meet all applicable requirements of the Fair Labor Standards Act (FLSA) and Federal Minimum Wage Laws.

4.4.15 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of Owner. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by Owner, Contractor will follow that plan unless otherwise approved by Owner in writing.

4.4.16 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to Owner, and receiving prior written approval of the change from Owner, which approval will not be unreasonably withheld.

4.4.17 Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in writing by Owner.

4.4.18 MAG Specification § 108.2(E), requiring a minimum amount of self-performance by Contractor for certain scopes of work, does not apply.

4.4.19 Owner anticipates the use one or more business applications, including a file sharing application called SharePoint (collectively “Business Applications”), each of which has its own applicable Terms of Use”. Contractor agrees to comply with and to be bound by the applicable Terms of Use, to utilize the relevant Business Applications in accordance with such Terms of Use and to cause its employees, representatives, agents and sub-subcontractors and their employees, representatives and agents) utilizing the relevant Business Applications do so in accordance with such Terms of Use.

4.5 Control of the Project Site

4.5.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

4.5.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of Owner and in accordance with all applicable Laws, Regulations, or Legal Requirements.

4.5.3 Contractor shall be responsible to Owner for the acts and omissions of Contractor’s employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.5.4 Contractor shall maintain Americans with Disabilities Act (ADA) and American Nationals Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to residents and the public.

4.6 Project Safety

4.6.1 The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:

- a. Williams-Steiger Occupational Safety & Health Act of 1970, Public Law, 91-596.
- b. Part 1019 and Part 1926 – Occupational Safety and Health Standards, Chapter XVII of Title 20, Code of Federal Regulations.
- c. Part 1518 – Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

4.6.2 Contractor is responsible for safety of the Site and the Project for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at or near the Site, or be impacted by the Work.

4.6.3 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.6.4 Contractor shall provide a “competent person” as required by O.S.H.A regulations. The “competent person” shall be identified at the Pre-Construction Conference with Owner advised in writing of any changes.

4.6.5 Contractor and Subcontractors shall comply with all Laws, Regulations, or Legal Requirements relating to safety, as well as any Owner specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Laws, Regulations, or Legal Requirements.

4.6.6 As between Owner and Contractor, Contractor is responsible to Owner for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.6.7 Contractor shall maintain and have sole responsibility for safety on the job site.

4.7 Materials Quality, Shop Drawings, Submittals, Substitutions and Reuse.

4.7.1 Quality Control and Quality Assurance Testing. Owner shall contract directly with third-party testing professionals required for the Project, but Contractor will implement and coordinate with Owner's testing plan and quality assurance plans pursuant to MAG Specification and MAG Standard Details MAG Specifications and MAG Standard Details and as further required and/or directed by Municipality.

4.7.2 Shop Drawings and Other Submittals

4.7.2.1 Contractor shall prepare and submit shop drawings and other submittals showing details of all work to insure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.7.2.2 A schedule of shop drawing and other expected submittals shall be submitted with the Project Schedule for Owner approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, shop drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of shop drawing and other submittals shall include all of the items for which shop drawings and/or submittals are required by the Contract Documents, including the Specifications.

4.7.2.3 Shop drawings and submittals shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- (a) All working and erection dimensions.
- (b) Arrangements and sectional views.
- (c) Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- (d) Kinds of materials and finishes.
- (e) Parts list and description thereof.

4.7.2.4 Contractor shall schedule, prepare and submit all shop drawings and other submittals in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.7.2.5 The review of shop drawings and/or submittals will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings or submittals, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No

construction called for by shop drawings or submittals shall be initiated until such have been reviewed and approved by Owner.

4.7.3 Substitutions or Reuse. Any requests or proposals for substitutions and/or reuse of materials shall be submitted and processed as provided in Section 4.7.2 above.

4.7.4 Long Lead Time Items. Contractor shall submit shop drawings and/or other submittals on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved shop drawings and/or submittals. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

4.8 Project Record Documents

4.8.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.

4.8.2 Contractor shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- (a) Dimensional changes to the Drawings.
- (b) Revisions to details shown on Drawings.
- (c) Locations and depths of underground utilities.
- (d) Revisions to routing of piping and conduits.
- (e) Actual equipment locations.
- (f) Changes made by Change Order or Addendum.
- (g) Details not on original Contract Drawings.

4.8.6 Contractor shall submit Project Record Drawing sets and Shop Drawings to Owner or its representative for review and comment.

4.8.7 Upon receipt of the reviewed Project Record Drawings from Owner, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to Owner prior to Final Acceptance and as a condition of Final Acceptance.

4.8.8 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

4.9 Warranty and Correction of Defective Work

4.9.1 Contractor warrants to Owner that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable Laws, Regulations, or Legal Requirements and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless

otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.9.2 Unless otherwise provided in the Contract, the date of Substantial Completion shall be the beginning of the Warranty period, except for those portions of the Work which may be unusable or not in service, irrespective of early completion by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Substantial Completion and that expire no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.

4.9.3 Contractor's warranty obligation shall be in accordance with MAG Specifications.

4.9.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to Owner all of the following written warranties that apply to the Work, in a form acceptable to Owner as set forth on **Appendix A**.

4.9.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide Owner with all manufacturers' warranties prior to Final Acceptance.

4.9.6 Contractor agrees that it shall be responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods set forth in Section 4.9.4 above, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by Owner, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.9.7 When notified of a warranty issue, Contractor shall respond in writing within 48-hours and shall perform warranty work as soon as material for said repairs are available (as judged solely by Owner), and in any event Contractor shall take immediate steps to commence and complete correction of nonconforming Work no later than the time period set forth in Owner's written notification in accordance with the Contract Documents. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by Owner to be an emergency, Owner shall notify Contractor, via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor shall immediately dispatch necessary forces to correct the defect or the emergency condition in accordance with Contract Documents.

4.9.8 The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that Owner may have regarding Contractor's other obligations under the Contract Documents.

4.9.9 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to Owner all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. Owner and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.9.

4.9.10 Contractor's warranty excludes damages or defects caused by abuse, alterations to the Work not executed by or through Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

4.9.11 A progress payment, or partial or entire use or occupancy of the Project by Owner, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.9.12 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to Owner all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. Owner and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.12.

4.10 Project Schedule. Contractor is responsible for preparing, monitoring, providing to Owner, and complying with and constructing the Project in conformance with the Project Schedule as set forth in Section 6 below.

SECTION 5 — OWNER’S RESPONSIBILITIES

5.1 Owner Project Manager and Inspectors.

5.1.1 Project Manager is responsible for providing Owner-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Contract Documents.

5.1.2 Project Manager will also provide Contractor with prompt notice when it observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

5.1.3 In addition to the Engineers as defined in the Contract, Owner may utilize Field Inspectors to assist Project Manager during construction in observing performance of Contractor. Owner's use of Inspectors is for the purpose of assisting Project Manager and such Field Inspectors are not acting in a regulatory or any other capacity.

5.1.3.1 The Inspectors and Engineers are authorized to inspect all Work and materials furnished. Such inspections may extend to all or part of the Work and to preparation, fabrication or manufacture of the materials to be used.

5.1.3.2 The Inspectors and Engineers shall have the authority to issue instructions contrary to the Construction Documents if approved and coordinated with the directions of Project Manager.

5.1.3.3 The Inspectors and Engineers shall have the authority to reject work or materials until any questions at issue can be decided by Project Manager.

5.1.3.4 The use of Inspectors by Owner and/or inspections by the Engineers shall not make Owner responsible for or give Owner control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the work in accordance with Contract Documents. The Inspectors are not authorized to direct any of Contractor's activities, employees or Subcontractors.

5.2 Contractor Services. Owner may contract separately with one or more Contractors to provide construction administration of the Project. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to Owner and Contractor.

5.3 Design Professional Services. Owner may contract separately with one or more Design Professionals to provide construction administration of the Project. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to Owner and Design Professional.

SECTION 6 — CONTRACT TIME

6.1 Contract Time

6.1.1 The Contract Time shall start with the Notice to Proceed (“NTP”) and end with Final Acceptance, as set forth in Section 6.4 below.

6.1.2 The Notice to proceed shall be issued in accordance with MAG Specifications § 108.

6.1.3 Beginning on the date of the NTP, Contractor shall begin to fulfill Contractor's obligations under the Contract. Contractor's obligations include providing Owner and other agencies with any submittals required by

the Project Specific Provisions, including but not limited to, an approved Project Schedule, Traffic Control Plans, and a Stormwater Pollution Prevention Plan. Contractor shall submit all such required submittals before any physical construction work commences on the Site. NTP does not authorize construction work until all contract insurance, bonds, and schedules are submitted to and accepted by the Owner.

6.1.4 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.

6.1.5 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

6.2 Project Schedule

6.2.1 The Project Schedule shall be updated, revised and maintained by Contractor and timely communicated to Owner, throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by Owner.

6.2.3 An updated Project Schedule shall be submitted by Contractor at least monthly to Owner as part of the Payment Request (or such shorter interval are required by the Owner or the Contract).

6.2.4 Contractor shall provide Owner with a status report as requested by Owner detailing the progress of the Work, including at a minimum: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 Acceptance of a submitted schedule by Owner should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. Owner's review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.6.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

6.2.7 Float Time

6.2.7.1 The Total Float time within the overall schedule is for the exclusive use of Owner, but Owner may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.7.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using

preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.7.3 Rain-Related Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on Contractor.

6.3 Substantial Completion

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which Owner agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment

6.3.2 Upon receipt Contractor's Punch List, Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that Owner can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Project Manager.

6.3.3 Certificate of Substantial Completion. The Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by Owner for its intended purpose, opening to the general public, full occupancy or use by Owner (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable); and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by Owner, subject only to the Punch List Items.

6.4 Final Acceptance and Final Completion

6.4.1 Unless otherwise expressly agreed to in writing by Owner or set forth in the Contract, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Completion will be a material breach of the Contract.

6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, Owner and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued and Final Completion shall not occur until all items of work, including Punch List Items, have been completed to Owner's satisfaction as reflected in the written Final Acceptance.

6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by Owner until Final Completion is obtained.

SECTION 7 — CONTRACT PRICE

7.1 Fixed Price Contracts. The Contract Price for all Fixed Price Contracts shall be the amount set forth in the Contract.

7.2 Guaranteed Maximum Price Contracts. Section 15.2 controls the Contracts Price for Guaranteed Maximum Price Contracts.

7.3 Unit Price Contracts.

7.3.1 Contract Price for all Unit Price Contracts shall be the amount set forth in the Contract or Change Order multiplied by the verified quantity provided.

7.3.2 Measurements of quantities to determine the total Contract Price shall be in accordance with MAG Specification §§ 109.1 and 109.2.

7.3.3 The Unit Price may only be changed as set forth in Section 9 below.

7.4 CMAR Contracts. Section 17.7 controls the Contract Price for CMAR Contracts.

7.5 Change Orders.

7.5.1 Fixed Price Change Orders: The Change Order Price for all Fixed Price Change Orders shall be the amount agreed to in the Change Order.

7.5.2 Cost Plus Change Orders: The Change Order Price for all Change Orders which are agreed to based upon a Cost Plus basis, will be determined in accordance with Section 15.2 below.

7.5.3 Unit Price Change Orders: The Change Order Price for all Unit Price Change Orders shall be the amount set forth in the Change Order multiplied by the verified quantity provided.

7.5.4 Measurements of quantities to determine the total Change Order Price shall be in accordance with MAG specifications §§ 109.1 and 109.2.

7.5.5 The Unit Price may only be changed as set forth in Section 9 below.

7.5.6 MAG Specification § 109.4.1 is modified as follows:

Before § 109.4.1, the following is added:

Any deduction or increase in the Contract Price must be supported by a signed, written Change Order fully executed by Owner, and supported by such backup as the Project Manager may require. No adjustments in any Unit Prices will be allowed.

Sections 109.4.1(A) and (B) and 109.4.2(A) are deleted in their entirety.

7.6 Municipality Sales Tax and Other Applicable Taxes. Contractor shall be responsible for collecting and remitting sales tax as necessary and this cost shall be included in all Contract Prices.

SECTION 8 — PAYMENT

8.1 Progress Payments

8.1.1 Payment for the Work will be made in accordance with MAG Specifications § 109 as amended below.

8.1.2 In MAG Specifications § 109.7 (A), replace the first paragraph of the subsection with the following:

Owner will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on form provided by Owner, and approved by Project Manager in accordance with Section 8.1.3 of the General Conditions. The monthly payment cycle will start with the date of the Notice to Proceed. Owner may process payments more frequently if requested by Contractor and agreed to in writing by Owner.

8.1.3 The payment process functions as follows: Prior to the monthly payment cycle date, Contractor shall send a Contractor Payment Request Form to Project Manager. The Project Team shall review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor shall certify the final Contractor Payment Request Form by signing and returning to the Project Manager. When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) days (except final payments).

8.1.4 Payments shall be made pursuant to A.R.S. § 34-609.

8.1.5 As a condition precedent for progress payments Contractor shall provide full and unconditional lien waivers for prior payments and conditional lien waivers for currently requested payments, in statutory form, executed by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Owner.

8.1.5 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of Owner's rights to withhold or offset payments, and/or other rights of Owner, under the Contract.

8.1.6 Owner reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if Owner determines that satisfactory progress is not being made.

8.1.7 Allowances. If the Contract which includes any Allowance items (as defined in Section 15.1.1 below) payments for the Allowance items shall be included in progress payments and accounted for as set forth in Section 15.4 below.

8.1.8 Value Engineering. Any changes in the Contract Price through value engineering or otherwise shall be accomplished through a written Change Order under Section 9 below.

8.2 Payment Upon Substantial Completion.

8.2.1 Within fourteen (14) Days after Substantial Completion and Owner's certification of amounts due pursuant to Contractor's payment applications upon Substantial Completion and subject to Contractor's full compliance with Section 8.1 above, Owner will pay to Contractor all undisputed sums due under the Contract, except:

- a. Remaining retention;
- b. An amount equal to the liquidated damages, if any, assessable under the Contract; and
- c. 150% of the cost to complete all punch list items identified pursuant to Section 6.3 above, as estimated by Project Manager.

8.2.2 No further payments shall be made to Contractor unless and until Final Completion.

8.3 Final Payment.

8.3.1 Subject to all of Owner's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after:

- (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by Owner;
- (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, acceptable sewer video results (if applicable), and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents) have been delivered to Owner, as specified in this Section 8.4;
- (iii) full and unconditional lien waivers in statutory form executed by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Owner;
- (iv) all conditions and requirements imposed by Owner or any financing entity for the corresponding disbursement have been met; and
- (v) Contractor delivers to Owner a Contractor Payment Request Form requesting Final Payment.

8.3.2 Contractor shall also submit a signed copy of Contractor's Affidavit Regarding Settlement of Claims, in form required by Owner, prior to Final Payment.

8.3.3 In addition, if required under the Project Specific Provisions, Contractor shall compile a complete equipment list and maintenance manual to be submitted to Owner as a precondition to Final Payment. The list shall include the following items for all equipment supplied under the Plumbing, Electrical, Air Conditioning, Elevator, and other Special Equipment Specifications.

- a. Name, Model and Manufacturer.
- b. Complete parts lists and drawings.
- c. Local source of supply for replacement parts along with suppliers' telephone numbers.
- d. Local service organizations serving the equipment and their telephone numbers.
- e. All tags, inspection slips, instruction packages, etc., removed from equipment shall be properly identified as to pieces of equipment from which they were taken.

8.3.4 Contractor shall also deliver to Owner not more than five (5) days after Letter of Acceptance, one (1) digital (in the format specified by Owner), and if requested by Owner, one (1) hard copy, of any applicable Maintenance manuals. Each manual shall include all manufacturer's operation and maintenance instructions and "as-built" drawings with the list herein specified. It shall also include all other diagrams and instructions necessary to properly operate and maintain the equipment, the name, address and telephone number of Contractor and all Subcontractors involved.

8.4 Owner's Right to Withhold Payment. Owner may withhold payment to such extent as may be necessary in Owner's opinion to protect Owner from loss for which Contractor is responsible.

8.5 Liens and Bond Claims. Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as Owner may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of Owner, or against payments due from Owner to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of Owner, against payment due from Owner to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature

of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless Owner from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

8.5 Financial Record Keeping and Owner's Audit Right

8.5.1 Records for all Contracts between Owner and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Owner or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.5.2 Owner, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at Owner's discretion, within three (3) years of Final Acceptance of the Work.

SECTION 9 — CHANGES TO THE CONTRACT

9.1 Extra Work/Changes in the Work

9.1.1 Owner reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order or Extra Work Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 In the event Owner and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra work, if the work in question is an item not provided for in the Contract as awarded. The Project Manager shall have the authority to determine, based upon factual evidence presented by the Contractor, whether the work in question is an item not provided for in the Contract as awarded. If the Project Manager directs the Contractor to perform extra work, the Project Manager's instructions shall include a price that the Contractor cannot exceed in charging the Owner for the extra work. Upon receipt of the Project Manager's directions to perform extra work, the Contractor shall promptly proceed with the extra work and document the actual cost thereof. Contractor's right to payment for extra work shall be determined under subsection 9.1.4(d) below. The Contractor is responsible to manage the extra work to ensure that the price limits set by the Project Manager are not exceeded. Contractor shall perform the extra work and submit documentation for the actual cost of the extra work to the Owner. A Change Order will be issued to cover this work.

9.1.3 Contractor shall not be entitled to payment for extra work unless a written Change Order, in form and content prescribed by Owner, has been executed by Owner. On all requests for Change Orders, Contractor shall specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra work is performed under subsection 9.1.2 above, a corresponding Change Order shall be prepared, approved and processed by Owner before payment can be made to Contractor.

9.1.4 In general, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded. The cost or credit to the Owner resulting from a change in the Work is subject to Appendix 2 (Policy Statement for Calculating Delays and Damages) and shall be determined, based on the type of pricing for the Contract involved, as follows:

- a. by mutual acceptance of a lump sum properly itemized in a form acceptable to Owner;
- b. by unit prices stated in the Contract Documents;
- c. when the Owner determines that a Unit Price Book Job Order associated with a Job Order Contract requires a Change Order, by using the same Total Cost Data and CCI that are in effect when the Change Order is anticipated to be issued; or
- d. by actual cost and a percentage fee covering overhead and profit, as follows:

- (i) Contractor shall perform the extra work and be compensated for actual cost of labor, materials and equipment.
- (ii) Contractor shall have the right to add the fee percentage applicable to the Work under the Contract, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra work performed solely by Subcontractors. Such percentage shall include all of Contractor's charges for overhead, profit, administration and supervision.
- (iii) Contractor shall have the right to add the fee percentage applicable to Work under the Contract for self-performed extra work, or if no such fee has been agreed to by the parties, Contractor's maximum total allowable additions for overhead, profit, administration and supervision shall not exceed ten percent (10%) of actual verifiable labor, materials and equipment for such self-performed extra work.

9.1.5 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

9.2 Accuracy of Change Order Pricing Information.

9.2.1 Subject to §§ 9.2.2 through 9.2.4, signature by the contracting parties shall constitute full accord and satisfaction between Owner and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

9.2.2 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to Owner to support its Fixed Price, Unit Price, and/or Cost Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the Approved Change Order work.

9.2.3 Right to Verify Change Order Pricing Information: Contractor agrees that Owner, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost Plus Change Orders.

9.2.4 Requirements for Detailed Change Order Pricing Information: Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

9.3 Emergencies. In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work shall be determined as provided in this Section.

9.4 Differing Site Conditions. If Differing Site Conditions are encountered at the Project Site, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. Owner will promptly investigate such conditions and, if Owner determines that Differing Site Conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Construction Schedule (and other time requirements), or both. If it is determined by Owner that the conditions at the Project Site are not Differing Site Conditions and no change is justified, then Owner shall so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after Owner has given notice of its decision. If Owner and Contractor cannot agree on an adjustment in the Contract Price or Project Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided these General Conditions.

9.5 Changes In Laws, Regulations, Or Legal Requirements Or Taxes. In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Contract by the parties, Contractor may be entitled to a Change Order, in Owner's discretion, to the extent Contractor can document to the satisfaction of Owner that such change significantly increases Contractor's actual cost of performance of the Work.

SECTION 10 — SUSPENSION AND TERMINATION

10.1 Suspension. Owner may suspend the Contract and/or Contractor's performance in accordance with MAG Specifications § 105.1.

10.2 Termination by Owner for Cause

10.2.1 MAG Specifications § 108.11 applies to the Contract.

10.2.2 Owner may also terminate the Contract if Owner determines, in its sole discretion, that Contractor has:

- (a) Refused or failed to supply enough properly skilled workers or proper materials;
- (b) Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
- (c) Disregards Laws, Regulations, or Legal Requirements or orders of a public authority having jurisdiction;
- (d) Or is endangering public health and/or safety; and/or
- (e) Otherwise breached a provision of the Contract Documents or any other contract between Owner and Contractor.

10.2.3 When any of the above reasons exist, Owner may terminate the Contract, without prejudice to any other rights or remedies of Owner, after giving Contractor and Contractors' surety, if any, seven (7) days' prior written notice of Owner's intent to terminate the Contract and Contractor's failure to cure any such reasons. Upon such termination, Owner may: (1) take possession of the Site and of all materials thereon owned by Contractor; and/or (2) finish the Work by whatever reasonable method Owner may deem expedient. When Owner terminates the Contract for one of the reasons state above, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the

Contract Price, excluding any remaining Contingency existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by Owner, such excess shall be paid to Contractor. If such costs, expenses and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. This obligation for payment shall survive termination of the Contract.

10.3 Termination by Owner for Convenience. Owner may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, Owner shall pay to Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from Owner to Contractor.

10.4 A.R.S. § 38-511. The Contract is subject to, and may be terminated by Owner in accordance with, the provisions of A.R.S. § 38-511.

10.5 Termination by Contractor. If Owner fails to make payment of any undisputed amounts within thirty (30) days after such payment is due, then following ten (10) days' prior written notice to Owner during which time the outstanding and undisputed amount remains unpaid, Contractor may terminate the Contract and recover from Owner payment for Work actually executed and for actual, proven loss with respect to materials, equipment, tools, construction equipment and machinery, including any associated Contractor's Fee, General Conditions Costs and actual damages incurred by Contractor solely as a result of such termination and not capable of mitigation. Under no circumstances shall Owner have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

SECTION 11 — INSURANCE AND BONDS

11.1 Insurance Requirements

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in the Contract.

11.1.2 Owner may, in the Contract Documents, designate additional insured(s) along with Owner (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to Owner under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.

11.1.3 Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.1.4 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to Owner separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

11.1.4 Verification of Coverage

11.1.4.1 Contractor shall furnish Owner with the most recent ACORD® Certificate of Liability Insurance form with additional insured endorsements as required under Exhibit B of the Contract.

11.1.4.2 All certificates and endorsements are to be received and approved by Owner before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the durations required in this Section. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.2 Bonds and Other Performance Security

11.2.1 When and as set forth in the Contract, Contractor shall provide a performance bond and a payment bond in full compliance with the applicable statutory and Contract requirements. If no time is specified in the Contract, the bonds shall be delivered to the Owner with the signed Contract.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.

11.2.3 The bonds shall be made payable and be acceptable to Owner. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, *et seq.*

11.2.4 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.

11.2.5 Personal or individual bonds are not acceptable.

SECTION 12 - INDEMNIFICATION

12.1 To the fullest extent permitted by law, Contractor, its successors and assigns shall indemnify and hold harmless the Owner and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any Laws, Regulations, or Legal. Contractors' duty to indemnify and hold harmless Owner and its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, only to the extent caused by negligence, recklessness or intentional wrongful conduct of, of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12.2 The indemnified party shall have the right to approve the legal counsel selected by Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

12.3 The indemnification, hold harmless provisions and Owner's Liability Insurance set forth herein shall survive any termination of the Contract.

SECTION 13 — DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

13.2 Dispute Resolution Representative (“DRR”) Process

13.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project (“Claim” or “Claims”) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the “DRR Process”).

13.2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) for claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the Town setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

(b) For claims by the Town, the DRR process will be initiated by the Town providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

(c) The DRR Notice shall be hand-delivered and e-mailed to the other parties’ designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice (“DRR Response”) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed (with read receipt) to the other parties’ Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager and the representatives of the Contractor and of the Design Professional shall act as the parties’ designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties’ designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or other document, the parties shall execute an appropriate written Change Order or other document pursuant to the terms of the Contract Documents.

13.3 Mediation

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting

required under Section 13.2.4 above, or after the DRR is terminated pursuant to Section 13.2.5 above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

13.3.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Maricopa County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.

13.3.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

13.3.4 Each party shall provide to the other party and the mediator all of the information and documentation required under 13.2.2(a) and (b) above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

13.3.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Queen Creek, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

13.4 Arbitration

13.4.1 If the mediation is unsuccessful, the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then current Construction Industry Arbitration Rules of the AAA, but not administrated or conducted by the AAA, which arbitration shall be held in Maricopa County, Arizona, utilizing a single arbitrator selected by the parties, unless the parties agree, in writing, to an alternative arbitration procedure.

13.4.2 If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed and the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the Arbitrator, and thereafter the arbitration shall be administered by the AAA.

13.4.3 The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction related practice, and whose practice, for at least the last five (5) years, consists of at least 50% construction law.

13.4.4 At the request of either party, the arbitration may include as parties, through joinder, consolidation or otherwise, additional persons or entities involved in the Project, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.

13.4.5 In relation to claims in which the amount in controversy is less than \$250,000, no discovery other than exchange of documents, designation of witnesses and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims), and no more than 3 depositions and 1 expert per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.

13.4.6 The prevailing party in any arbitration or court proceeding under this Agreement shall be entitled to an award by the Arbitrator or judge of its attorneys' fees, costs, and expenses (including expert witness fees) incurred. The Arbitrator and/or judge can also award both pre-judgment and post-judgment interest.

13.4.7 A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

13.4.8 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.

13.4.9 The Party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that Party on which arbitration is permitted to be demanded.

13.4.10 Any award by the arbitrator shall not include any consequential or punitive damages.

13.4.11 The award entered by the arbitrator shall be a reasoned award.

13.4.12 The award entered by the arbitrator shall be final and judgment may be entered thereon in the Arizona Superior Court.

SECTION 14 — MISCELLANEOUS PROVISIONS

14.1 Assignment. Neither Contractor nor Owner shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

14.2 Governing Law and Venue. In the performance of the Contract, Contractor shall abide by and conform to any and all Laws, Regulations, or Legal Requirements of the United States, State of Arizona, Maricopa County, and the City including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.

14.3 Survival. All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

14.4 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

14.5 Project Communications

14.5.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.5.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications are not binding upon

Owner and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

14.6 Bids/Proposals. Unless otherwise stated in the solicitation, all Contractors, Design Professionals and Subcontractors shall hold their bids and/or proposals valid for a period of 120 days from the proposal due date stated in the solicitation.

14.7 Contract Documents.

14.7.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards

14.7.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence as follows from highest to lowest: Change Orders, Addenda, Contract/Job Order, Project Specific Provisions, General Conditions, Technical Specifications, Drawings, Municipality's Amendments to MAG Standard Specifications and Municipality's Standard Details, and MAG Uniform Standard Specifications and Details for Public Works Construction

14.7.3 On the drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small-scale drawings

14.7.4 The headings used in this Agreement or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision

14.7.5 The Contract Documents form the entire agreement between Owner and Contractor. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

14.7.6 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party in the form of a Change Order.

14.8 Cooperation and Further Documentation. Contractor agrees to provide Owner such other duly executed documents as shall be reasonably requested by Owner to implement the intent of the Contract Documents.

SECTION 15 - PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED CONTRACTS, AND CHANGE ORDERS

Note: The provisions in this Section 15 only apply to Contracts or Change Orders involving Guaranteed Maximum Price (GMP) or cost-based pricing.

15.1 Additional Definitions.

The definitions set forth in Sections 1 apply to GMP and Cost-Based Contracts, Change Orders, and Job Orders, together with the additional definitions set forth below.

15.1.1 Allowance - A specific amount for a specific item of Work, if any, that Owner agrees has not been sufficiently designed, detailed, or selected at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.4 of these General Conditions.

15.1.2 Baseline Cost Model – A breakdown and estimate of the scope of the Project developed by CMAR pursuant to Section 17.5.1 of these General Conditions.

15.1.3 CMAR or Construction Manager at Risk - The person or firm selected by Owner to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract

with Owner. In these General Conditions, the term “Contractor” includes CMAR under both pre-construction and construction services contracts.

15.1.4 CMAR Fee or Contractor’s Fee – An agreed to percentage in an accepted GMP that represents the Contractor’s fee for performance of the Work.

15.1.5 Contingency – An agreed to amount in the GMP that may only be used in accordance with the terms set forth in Section 15.4 of these General Conditions.

15.1.6 Contract Documents - Where compensation under the Contract is based upon a GMP accepted by Owner, the term “Contract Documents” also include the accepted Proposal.

15.1.7 Contract Price - Where compensation under the Contract is based upon a GMP accepted by Owner, the term “Contract Price” refers to the GMP.

15.1.8 Cost-Based Contract, Change Order, or Job Order – A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents, including this Section 15. These would include those generally referred to as “Cost of the Work plus a Fee with a GMP”, “Time and Materials”, or “Cost Plus a Fee”.

15.1.9 Cost of the Work - The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance of the Work. The Cost of the Work shall include only those costs set forth in Sections 15.2 and 15.3 of these General Conditions.

15.1.10 Deliverables – The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during the pre-construction may include but are not limited to: the Baseline Cost Model and Schedule that validate Owner’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

15.1.11 Detailed Project Schedule – The Detailed Project Schedule developed by the CMAR for the review and approval of the Project Manager in accordance with Section 17.3 of these General Conditions, if applicable.

15.1.12 General Conditions Costs – Those costs set forth in Section 15.3.4 of these General Conditions.

15.1.13 GMP Plans and Specifications – The plans and specifications upon which the Guaranteed Maximum Price Proposal is based.

15.1.14 GMP Proposal - The proposal of Contractor based upon a GMP submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portions (phases) of the Work.

15.1.15 Guaranteed Maximum Price or GMP – The Guaranteed Maximum Price set forth in the Contract, Change Order, or Job Order if applicable.

15.1.16 Open Book – On any GMP-based Contract, or Change Order, Owner may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

15.1.17 Preconstruction Services – The services to be provided under the Pre-Construction

Services Contract, including Section 3 of the Contract, including without limitation those set forth in Section 17 below of these General Conditions.

15.2 Contract Price.

15.2.1 The Contract Price for all Contracts and Change Orders based upon payment of the Cost of the Work plus a Fee with a GMP, time and materials, or cost-plus a fee shall be the Cost of the Work incurred plus the Fee agreed to in writing by Owner, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Contract or Change Order, all Cost Based pricing shall be subject to and limited to a GMP.

15.2.2 The Contract Price may only be changed as set forth in Section 9 above.

15.2.3 Only costs specifically designated as reimbursable costs are eligible for payment by Owner or may be charged against the Contract Price. All other costs will not be paid by Owner and shall not be chargeable against the Contract Price.

15.2.4 Cost-Based Contracts of \$250,000 or Less. For Contracts or Change Orders where the Contract Price is \$250,000 or less, reimbursable costs shall be determined pursuant to MAG Specifications § 109.5, and not Section 15.3 below.

15.2.5 Cost-Based Contracts Over \$250,000. For Contracts or Change Orders where the Contract Price is over \$250,000, reimbursable costs shall be limited to the actual cost of the Work and shall be determined pursuant to the following Section 15.3, Cost of the Work, and not by MAG Specifications 109.5.

15.3 Cost of the Work.

15.3.1 Costs to be Reimbursed.

15.3.1.1 Generally. The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Section 15.3.1.

15.3.1.2 Labor Costs.

15.3.1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops. Cost to be reimbursed will be the actual wages paid to the individuals performing the work.

15.3.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to Project matters is considered to be covered by the Contractor's Fee.

15.3.1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

15.3.1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 1.2 1 through 1.2.3.

15.3.1.2.4.1 Cost of the Work shall include the actual net cost to the Contractor for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. The Contractor may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

15.3.1.2.4.2 Overtime wages paid to salaried personnel (if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

15.3.1.2.4.3 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

15.3.1.2.4.4 Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the Project:

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

For non-union personnel, no other fringe benefit costs (other than the 3 specific categories listed immediately above, shall be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

15.3.1.3 Subcontract Costs

15.3.1.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

15.3.1.3.2 For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon Guaranteed Maximum Price for the "self-performed work". The Contractor may bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not to exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be

consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for “self-performed work” shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining “self-performed work” subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee’s relatives will be considered a related party entity and will be subject to this provision regarding “self-performed work”. No self-performed work will be allowed to be performed on a lump sum basis.

15.3.1.3.3 Contractor (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide Owner advance written notice and shall obtain Owner's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

15.3.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

15.3.1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

15.3.1.4.2 Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

15.3.1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

15.3.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

15.3.1.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

15.3.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner’s prior written approval.

15.3.1.5.2.1 The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered “job owned”. At the completion of the Project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Contractor.

15.3.1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly

and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Contractor.

15.3.1.5.2.3 Equipment Rental Rates.

15.3.1.5.2.3.1 Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.

15.3.1.5.2.3.2 All equipment rental rates and costs are subject to the Owner's right to audit when submitted as part of the Equipment Plan and/or at any time during the Project.

15.3.1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

15.3.1.5.2.5 Fair market value for used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

15.3.1.5.2.6 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under the Contract.

15.3.1.5.2.7 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.

15.3.1.5.2.8 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

15.3.1.5.3 Costs of removal of debris From the Site.

15.3.1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

15.3.1.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work. No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 100 miles from the Project location. Any travel involving airfare will require advance written approval by an authorized Owner's representative.

15.3.1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

15.3.1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

15.3.1.6 Miscellaneous Costs.

15.3.1.6.1 That portion of insurance and bond premiums that can be directly attributed to the Contract:

15.3.1.6.1.1 The Contractor's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

15.3.1.6.1.2 The amount to be reimbursed to the contractor for all contractually required liability insurance will be actual costs not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee). If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Contractor's Fee.

15.3.1.6. 2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

15.3.1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

15.3.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of ¶ 1.7.3 below.

15.3.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

15.3.1.6.6 Data processing costs related to the Work. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the FMV of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware shall be turned over to the Owner whenever it is no longer needed for the Project. If the Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

15.3.1.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

15.3.1.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the

performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

15.3.1.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by the Owner in writing. If Owner authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by Owner will be considered to be covered by the Contractor's Fee.

15.3.1.7 Other Costs and Emergencies.

15.3.1.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

15.3.1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

1 5.3.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

15.3.1.8 Related Party Transactions.

15.3.1.8.1 The term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

15.3.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.

15.3.2 Costs Not to be Reimbursed.

15.3.2.1 The Cost of the Work shall not include:

15.3.2.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 15.3.1.2.2 and 15.3.1.2.3.

15.3.2.1.2 Expenses of the Contractor's principal office and offices other than the site office.

15.3.2.1.3 Overhead and general expenses, except as may be expressly included in Section 1.

15.3.2.1.3.1 Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly the

Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Contractor's home or branch offices, or other outside service locations.

15.3.2.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

15.3.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 15.3.1.5.2.

15.3.2.1.6 Except as provided in Subparagraph 1.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

15.3.2.1.7 Any cost not specifically and expressly described in Section 1.

15.3.2.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the GMP to be exceeded.

15.3.3 Discounts, Rebates, Refunds and Savings.

15.3.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

15.3.3.1.1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

15.3.3.1.2 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Owner if the Contractor is eligible to take advantage of the discounts.

15.3.3.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

15.3.4 General Conditions Costs.

15.3.4.1 General Conditions Costs may include, but are not limited to the following types of costs incurred by the Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses.

15.3.4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by the Owner.

15.3.4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by the Owner.

15.3.4.4 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to the Owner, subject to any express right in the Contract for the Contractor to share in savings. Savings are subject to the Owner's right to audit, and may be audited separately.

15.4 Allowances.

15.4.1 Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by Owner. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Owner in accordance with a schedule to be mutually agreed upon by Owner, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

15.4.2 Unless otherwise provided in the Contract Documents:

15.4.2.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowance, delivered at the Site, and all applicable taxes;

15.4.2.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and

15.4.2.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

15.5 Contingency.

15.5.1 The GMP includes a Contingency. The Contingency (but not the GMP) as set forth in the Schedule of Values shall be adjusted, as may be required, to reflect net savings or net losses resulting from the award of Subcontracts. The amount of the adjustment to the Contingency shall be determined by subtracting the face amount of each Subcontract at the time the Subcontract is entered into from the amount allocated in the initial Schedule of Values applicable to the Work to be performed under such Subcontract. Contractor may only permit funds to be expended from the Contingency for Cost of the Work incurred for completion of the Work after notifying Owner in writing of such expenditure and obtaining written approval from Owner of such expenditure.

15.5.2 After award of all major Subcontracts (representing at least 80% of the GMP), the Contingency may be used by Owner for Owner initiated Change Orders, provided that there remains in the Contingency an amount equal to the original percentage of the Cost of the Work as represented by the Contingency set forth in the GMP. At mutually agreed upon milestones, Owner and Contractor shall meet and confer to analyze the Contingency and determine methods of reducing such Contingency for the benefit of Owner for use on the Project to implement scope changes to the Work or otherwise to make the Contingency available for Owner's use. To support such analysis, Contractor shall identify any actual or known potential claims against it or actual or reasonably anticipated events that would constitute permissible uses of the Contingency. After good faith negotiations, and upon the written request of Owner, Contractor shall release to Owner the requested amount of the Contingency. After Contractor releases any portion of the Contingency, any such release shall be evidenced by a Change Order.

15.6 Reduction In Retention.

If the Contract Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.2.2.3 above, Contractor must also submit to the Project Manager a complete accounting of the actual reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Owner may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by Owner, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Owner. The Project Managers determinations as to actual reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract. There is no retention for Job Order Contracting construction services contracts.

15.7 Final Payment.

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by Owner, Contractor must submit to the Project Manager a complete final accounting of the actual reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Owner may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by Owner, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Owner. Disputes relating to the final Cost of the Work shall be subject to Owner's audit rights under Sections 8.9 above and 15.7 below, and the dispute resolution process under Section 13 above.

15.8 Open Book.

In addition to the foregoing, all Cost-Based Contracts, Job Orders, or Change Orders, shall be Open Book.

15.9 Differing Site Conditions and/or Change In Laws.

A Change Order for increased costs under Section 9.4 or 9.5 above will only be considered or granted by Owner to the extent such actual, documented costs exceed the remaining amount of the Contractor's Contingency.

SECTION 16 - PROVISIONS APPLICABLE SOLELY TO JOB ORDER CONTRACTS (JOC)

This section intentionally omitted.

SECTION 17 – PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES

Note: Unless otherwise specified in the Contract, the provisions in this Section 17 only apply to Contracts involving Pre-Construction services being performed by a CMAR (i.e., the Construction Manager at Risk Pre-Construction Services Contract). That is why in this Section 3, the term "CMAR" is utilized instead of the term "Contractor", which is utilized throughout the remainder of these General Conditions. See the definitions of "Contractor" in Section 1 above and "CMAR" in Section 15.1 above.

17.1 Additional Definitions

The definitions set forth in Sections 1 and 15.1 above shall apply to all Pre-Construction Services Contracts.

17.2 General

17.2.1 CMAR shall perform the Services required by, and in accordance with the Contract Documents and as outlined in the Exhibit A to the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.

17.2.2 As a participating member of the Project Team, CMAR shall provide to Owner and Design Professional a written evaluation of Owner's Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR shall prepare a Baseline Cost Model that validates Owner's budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost Model for variances. Owner and Design Professional will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.

17.2.3 CMAR shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of CMAR Contract for default.

17.2.4 CMAR shall provide Pre-Construction Services, described herein, in a timely manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify Owner in writing whenever CMAR determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

17.2.5 CMAR when requested by Owner, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

17.2.6 Ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Owner. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Owner. The rights in this Section are exclusive to Owner in perpetuity.

17.2.7 CMAR represents to Owner in completing the Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR does not assume any design responsibilities unless specifically called for in the scope of work, but CMAR shall be responsible for his errors, omissions or inconsistencies included in the Work.

17.3 Detailed Project Schedule

17.3.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CMAR shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path Method ("CPM") technique, unless required otherwise, in writing by Owner. CMAR shall use scheduling software acceptable to Owner to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate milestone dates for the phases once determined. As part of construction phase, Owner may require CMAR to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/ anticipated number of personnel per day for each task. CMAR shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.

17.3.2 CMAR shall include and integrate in the Detailed Project Schedule the services and activities required of Owner, Design Professional and CMAR including all construction phase activities based on the input received from Owner and the Design Professional. The Detailed Project Schedule shall define activities as determined by Owner to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by Owner. The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by Owner, relationships between the activities, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Completion.

17.3.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR shall update and maintain a Detailed Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

17.3.3 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and Owner and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

17.3.4 Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR shall identify all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule.

17.3.5 Equipment Plan. Contractor shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to Owner and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment, but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

17.4 Design Document Reviews

17.4.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.

17.4.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by Owner and copies of the reports will be provided to CMAR.

17.4.3 CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through the various pre-construction phases. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall use established value analysis principles in recommending cost effective alternatives.

17.4.4 CMAR shall routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.

17.4.4.1 CMAR shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing Owner systems and maintains traffic on adjacent roadways. CMAR shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed, and shall promptly inform the Project Team of any issues.

17.4.4.2 CMAR shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.

17.4.4.3 The results of the reviews shall be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the

Drawings, Specifications and other documents. CMAR shall meet with Project Team to discuss any findings and review reports.

17.4.4.4 CMAR's reviews shall be from a contractor's perspective, and though it shall serve to eliminate/reduce the number of RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.

17.4.5 It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable Laws, Regulations, or Legal Requirements, sound engineering principle's rules and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those Laws, Regulations, or Legal Requirements.

17.4.6 The Project Team shall routinely identify and evaluate using value analysis principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. Owner, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CMAR suggested alternatives into the Drawings and Specifications. CMAR shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and Owner's approval prior to the establishment of the GMP.

17.5 Baseline Cost Model, Detailed Cost Estimates, And Schedule Of Values

17.5.1 At the conclusion of the Master Planning and Programming, if required, CMAR will review all available information regarding the design and scope of the Project, using CMAR's experience in performing similar work, knowledge of similar projects and current and projected construction costs, and based upon that review shall develop a Baseline Cost Model for review by the Project Team and approval by Owner. Once approved by Owner, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout the pre-construction until a final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by Owner prior to the start of construction. It is the responsibility of CMAR to ensure Owner has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CMAR of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CMAR shall communicate to the Project Team any assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by Owner. The Baseline Cost Model shall also include contingencies as agreed to by Owner, which may include, but are not limited to: (a) a design contingency that takes into consideration the advancement of the then current design documents, (b) an escalation contingency from the time of the estimate through the scheduled buy out of the Project, (c) a construction contingency in the same percentage as the Contingency to be included in the GMP.

17.5.2 After receipt of the Design Professional's most current documents from certain specified pre-construction milestones, CMAR shall provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction milestone. The pre-construction milestones applicable to this paragraph are: Master Planning and Programming, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Drawings. If no consensus is reached, Owner will make the final

determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CMAR shall provide the requested information in a timely manner.

17.5.3 If at any point the Detailed Cost Estimate submitted to Owner exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 17.5.2 above, CMAR shall make appropriate recommendations to Project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.

17.5.4 Near completion of the 50% Construction Drawings and included with the associated report, CMAR shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be based on Owner standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents

17.5.5 CMAR is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: Owner generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then between the Detailed Cost Estimates for each of the pre-construction milestones thereafter, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Documents, and the bid packages for all Phases.

17.5.6 Upon request by Owner, CMAR shall submit to Owner a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by Owner and based on information provided by Owner, CMAR shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist Owner in the financing process.

17.5.7 Construction Water. CMAR shall estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided to Owner.

17.6 Subcontractor And Major Supplier Selections

17.6.1 There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CMAR. In any case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of the Subcontractors/Suppliers, to the extent applicable. CMAR shall comply with its subcontractor selection plan submitted with its Statement of Qualifications.

17.6.2 Owner may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed after such a qualifications-based selection for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by Owner.

17.6.2.1 Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.

17.6.2.2 If a Subcontractor/Supplier selection plan was submitted and agreed to by Owner, CMAR shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide Owner with its review and recommendation.

17.6.2.3 CMAR must receive written Owner approval for each selected Subcontractor(s) and Supplier(s).

17.6.2.4 CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

17.6.3 All Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to paragraph 17.5.2 above.

17.6.3.1 CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by Owner and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by Owner to submit less than three names. Without prior written notice to Owner, no change in the recommended Subcontractors/Suppliers shall be allowed.

17.6.3.2 If Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to Owner.

17.6.3.3 CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

17.6.3.4 If CMAR desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and Owner concurs that it is necessary in order to insure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or re-bidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by Owner.

17.6.3.5 CMAR shall receive, open, record and evaluate the bids; provided, however, that if CMAR or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids shall be received, opened, recorded and evaluated by Project Manager instead of CMAR. Bids for each category of Work shall be opened and recorded at a pre-determined time. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids shall be done with Project Manager in attendance to observe and witness the process. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

17.6.4 CMAR shall be required to prepare two different reports on the subcontracting process.

17.6.4.1 Within fifteen days after each major Subcontractor/Supplier bid opening process; CMAR shall prepare a report for Owner's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CMAR intends to self-perform, if any.

17.6.4.2 Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to Owner of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended

Subcontractors/Suppliers for each category of Work.

17.6.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.

17.6.6 If after receipt of sub-bids or after award of Subcontractors and Suppliers, Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by Owner, CMAR's proposed GMP/Price for the Work or portion thereof may be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

17.7 Fixed Price/GMP Proposal

17.7.1 The Owner may require and/or accept a either a Fixed Price Proposal or a GMP Proposal, as set forth in the solicitation and/or as agreed to by the Owner.

17.7.1.1 Fixed Price Proposal. When the Proposal submitted by the CMAR is a Fixed Price, that Fixed Price will be the Contract Price.

17.7.1.2 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work (as set forth in Sections 15.2 and 15.3 above) in each phase of the Work that is being proposed plus the current estimate for all other Work. Owner will not approve the GMP for the phase of work without a total estimate for the complete Project. Owner may request a GMP Proposal for all or any portion of the Project and at any time during the pre-construction. Any GMP Proposals submitted by CMAR shall be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

17.7.2 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CMAR Fee, General Conditions Cost and Contingency. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CMAR shall be responsible for any costs or expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.

17.7.3 CMAR shall prepare its Proposal in accordance with Owner's request for Proposal requirements based on the most current completed Drawings and Specifications at that time, which unless otherwise directed by Owner in writing, shall be at 100% construction drawings. CMAR shall mark the face of each document of each set upon which its Proposal is based. These documents shall be identified as the Proposal Plans and Specifications. CMAR shall send one set of those documents to the Project Manager, keep one set and return a third set to the Design Professional.

17.7.4 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any Proposal(s), all of which shall reflect the Proposal Plans and Specifications the Detailed Project Schedule shall be shown in relationship to the total Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Sections 17.3.1 through 17.3.5.

17.7.5 Proposal(s) Review and Approval.

17.7.5.1 CMAR shall meet with the Project Team to review the Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal.

17.7.5.2 If during the review and negotiation of Proposals design changes are required, Owner may authorize and cause the Design Professional to revise the Proposal Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in

the final approved GMP Proposal. Such revised Proposal Plans and Specifications will be furnished to CMAR. CMAR shall promptly notify the Project Team in writing if any such revised Proposal Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

17.7.6 All portions of or items comprising the Proposal are subject to audit by Owner, as deemed appropriate by Owner, including, without limitation, any based upon unit prices or Work to be self-performed by CMAR, or its affiliates.

17.7.7 GMP Proposals shall be Open Book.

17.8 Payment Procedure For Pre-Construction Services

17.8.1 Requests for monthly payments by CMAR for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

17.8.2 In no event will Owner pay more than seventy-five percent (75%) of the Contract Price until final acceptance of the all Pre-Construction Services, and award of the final approved Construction Services Contract for the entire Project by Owner Council. If CMAR does not prepare a GMP Proposal that is acceptable to Owner, or the GMP Proposal exceeds the Owner's Construction Budget, then CMAR understands and acknowledges that it will forfeit any right to receive the 25% of the Contract Price being retained by Owner.

17.8.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of Owner during the progress of any portion of the Pre-Construction Services specified in this Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of Owner of any of their respective legal rights herein.

17.8.4 No compensation to CMAR shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

17.8.5 If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

17.9 Additional Pre-Construction Services

17.9.1 Additional services which are outside the scope of the services required under the Contract Documents applicable to a particular project shall not be performed by CMAR without prior written authorization from Owner. Additional services, when authorized by an executed written Change Order under Section 9 of these General Conditions, shall be compensated by a fee mutually agreed upon in such written Change Order between Owner and CMAR.

17.9.2 No claim for additional services, extra work done or materials furnished by CMAR shall be allowed by Owner except as provided herein, nor shall CMAR provide any additional services, do any work, or furnish any material(s) not covered by the contract governing a particular project unless such work or material is first authorized in writing by the Project Manager. Work or material(s) furnished by CMAR without such prior written authorization shall be at CMAR's sole jeopardy, cost, and expense, and CMAR hereby agrees that without prior written authorization no claim for compensation for such services, work or materials furnished shall be made, and Owner shall not be responsible for such costs.

17.9.3 No Work (as defined by Section 1 of these General Conditions) may be performed under any contract, without prior written approval by the Owner. As an example, all procurement of long lead time items that must be procured to support the construction schedule or site investigative Work necessary to complete Pre-Construction Services, if done by the CMAR, will be performed only after a Proposal for the Work has been approved and accepted in writing by Owner and all such Work shall be done only under an executed Contract for Construction Services, or pursuant to a prior written direction from Owner to engage in such procurement.

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