



St. Charles Parish

CONSTRUCTION MANAGEMENT AT RISK (CMAR) FOR THE HAHNVILLE BRANCH LIBRARY CONSTRUCTION PROJECT

EXHIBITA - CONSTRUCTION MANAGER AT RISK AGREEMENT (CMAR) GENERAL CONDITIONS February 27, 2025

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SECTION 1
GENERAL

1.1 MUTUAL OBLIGATIONS.

- 1.1.1 St. Charles Parish (SCP) and Construction Manager at Risk (CMAR) commit, at all times, to cooperate fully with each other, and proceed on the basis of trust, confidence, and good faith to permit each Party to realize the benefits expected and afforded under the Contract Documents, which benefits include the satisfactory and timely completion of the Project and performance of all obligations required by the Contract Documents.

1.2 BASIC DEFINITIONS.

- 1.2.1 Wherever the singular masculine pronoun is used herein as referring to CMAR, it shall be construed to mean all genders, singular and plural, according to the status of CMAR.
- 1.2.2 “Allowances” are specific values set forth as an estimate for the cost of certain items of work that will be identified during the Pre-Construction Services as provided in these General Conditions at Section 7.10. Allowances will be used to compensate CMAR should the identified items of Work occur during the Construction Phase of the project. Any Allowances that are unused at the completion of the Project will remain with SCP and not be paid to the contractor.
- 1.2.3 “Contractor Contingency” means that part of the GMP CMAR may use during the Bidding or Construction Phase, as provided in these General Conditions at Section 7.11.1, to cover any excess of the amount bid by a Subcontractor over the amount allotted for that work in the GMP, legitimate unforeseen construction expenses, or expenses otherwise agreed by SCP and CMAR, all subject to SCP’s approval, after GMP has been accepted. Contingency may not be used to cover the cost of any work on the Project after issuance of the Certificate of Final Completion.
- 1.2.4 “CMAR” means the Construction Manager At Risk identified as such in the Agreement and its authorized representatives.
- 1.2.5 “Construction Documents” are the Design Documents prepared by the Design Professional for the Project, including the plans and specifications for the Project that are approved by SCP and incorporated into the GMP, to be used to construct the Project. All modifications to the Construction Documents must be approved by the Engineer, in writing, prior to incorporation into the Agreement.
- 1.2.6 “Construction General Conditions” refers to on-site project overhead costs which includes but is not limited to the following:
- a) Cost of staff labor (wages, benefits, taxes, insurance etc.),
 - b) Cost of staff vehicles (ownership and operating costs),
 - c) Cost of moving expenses for project staff,
 - d) Cost of subsistence, travel related expenses or other temporary living expenses for project staff,

- e) Cost of on or off-site training expenses that are required or beneficial for the prosecution of the work,
- f) Cost of pre-mobilization office space rent and operating expenses (this does not include the Pre-Construction Phase),
- g) Cost of PCs and commercial software purchase/license for project staff and craft personnel,
- h) Cost of other IT expenses required for the work, internet set up and service, copier / printer lease etc.,
- i) Cost of mobile data and communication devices (tablets and / or cellular phones) and data plans for staff and craft personnel,
- j) Costs to operate 'permanent' field office(s) (custodial, office supplies, and other type expenses,
- k) Cost of installation and monthly usage for field office(s) utilities,
- l) Cost of partnering expenses (if required),
- m) Cost of site security and / or fencing (if required),
- n) Cost of safety supplies (personal protective equipment, special protective equipment, first aid, etc.),
- o) Cost of craft and site support items (chemical toilets, water, ice, etc.)
- p) Cost of obtaining, maintaining, and executing all permits.

For reimbursable portions of the Work, any SCP Library-approved meal expense shall not exceed SCP Library's current policies applicable to SCP Library's employees, unless the Engineer specifically authorizes a different reimbursement rate in writing in advance of the incurrence of such expenses. Specifically excluded is any expense for alcohol.

For reimbursable portions of the Work, out-of-town travel, including travel time and living expenses may be included in Construction General Conditions if such travel expense is: (i) necessary to perform the Scope of Work and (ii) pre-authorized and approved by the Engineer in writing. If approved, compensation for meals and lodging expenses shall be subject to SCP Library's current travel and business meal policies applicable to SCP Library's employees, unless the Engineer specifically authorizes a different reimbursement rate in writing in advance of the incurrence of such expenses. CMAR's subsistence rates shall be negotiated at time of GMP-setting. Subsistence rates, duration and specific categories of expenses must be determined to be fair and reasonable, and approved in advance, in writing, by the Engineer.

CMAR's allowable labor rates and burdened labor rates within any rates or part of the Construction General Conditions are restricted to direct labor costs, that is, salaries/wages plus statutory or regulatory required costs (social security, Medicare employee's match, unemployment, etc.) and employee related benefits and expenses (for example, vacations, health insurance, retirement, etc.), as agreed to by the Engineer and identified in Exhibit F – Statement of All Clarifications and Assumptions. If CMAR self-performs Work, self-perform labor rates, and any approved overtime rates, shall follow the policy set forth in Section 2.2.4.7.

CMAR's Construction General Conditions must include a detailed listing of rental equipment with rental rates and anticipated duration of use, and purchase prices for said equipment per requirements of Section 7.12.

CMAR's Construction General Conditions-type charges may not be listed in the Subcontractors' Schedule of Values, nor will such charges be paid by SCP if listed therein.

Construction General Conditions shall first be submitted by CMAR during GMP negotiation process as a detailed breakdown of itemized costs and shall be reimbursed as a category of work within the Schedule of Values based on either actual cost or negotiated amounts, as agreed to by the Engineer.

All excluded expenses CMAR incurs while performing and completing the Project are not reimbursable as Construction General Conditions.

- 1.2.7 "Construction Management Professional" or "CMP" – is a representative of SCP for the Project, whose Agreement is with SCP, and provides construction management and resident inspection services for the Project.
- 1.2.8 "Construction Phase" – is defined as including but not limited to the following subphases: construction administration, closeout and warranty, and may include some activities that occur after Final Completion.
- 1.2.9 "Construction Phase Fee" includes the CMAR's audited G&A (General and Administrative Overhead Rate as defined in 1.2.22) and CMAR's profit for the Construction Phase of the project.
- 1.2.10 "Construction Phase Services" includes the services to be performed by CMAR under this Agreement during the Construction Phase, including those services identified in Section 2.5.
- 1.2.11 "Contract Time" is a time set forth in the Contract Documents for any time periods identified.
- 1.2.12 "Cost of the Work" is the sum of Direct Construction Costs, Construction General Conditions, Allowances, Contractor Contingencies, and Indirect Costs.
- 1.2.13 "Day" as used in these General Conditions refers to calendar day unless otherwise denoted.
- 1.2.14 "Deliverables" - the work product prepared by CMAR within the definition of the Scope of Work in the Agreement. Some of these Deliverables provided by CMAR during the Pre-Construction Phase are the Project Schedule, Schedule of Values, Alternative System Evaluation and Procurement Strategies.
- 1.2.15 "Design Phase" (or "Pre-Construction Phase") is defined as including but not limited to the following subphases: Program Development, Conceptual Design, Schematic Design, Design Development, GMP-Setting and the completion of Construction Documents.

- 1.2.16 “Design Professional” or “DP” is the person or organization, and his or its authorized representatives, who is a) a qualified professional properly licensed in the State of Louisiana, and b) responsible for the design of the Project and the preparation of the Drawings and Specifications on behalf of SCP. The DP is not the Agent of SCP
- 1.2.17 “Design Documents” (or “Design Submission Documents”) consist of the Drawings and Specifications prepared at specific phases of the design effort by the Design Professional including 30%, 60%, 90% and 100%, as well as cost estimates and other documents prepared by the DP and CMAR that are submitted for the Engineer’s approval for each subphase of the Project design services.
- 1.2.18 “Direct Construction Costs” refers to all costs that are directly tied to the physical construction of the facility and/or equipment provided and installed. Direct Construction Costs include but are not limited to the following:
- a) Cost of CMAR provided craft labor (wages, benefits, taxes, insurance etc.),
 - b) Cost of CMAR owned equipment used in the performance of the work.
(ownership, operating and maintenance costs),
 - c) Cost of third party (outside) rented equipment (quoted rental rates and operating costs and maintenance and repair costs not included in the rental rate),
 - d) Cost of miscellaneous services, tools and supplies that are required for the prosecution of the work,
 - e) Cost of all permanent materials to be incorporated into the project that are not provided but SCP,
 - f) Cost of all work that is performed by Subcontractors,
 - g) Cost of all survey and control costs to prosecution the work,
 - h) Costs of renting / purchasing / installing and maintaining ‘permanent’ field office(s) for the project,
 - i) Cost of construction engineering, temporary structures engineering and other engineering required to facilitate the construction of the Project,
 - j) Cost of all temporary structures, devices or systems required to facilitate the construction of the project,
 - k) Cost of Quality Control / Quality Assurance.
- 1.2.19 “Engineer” shall refer to SCP, acting through its designated representative authorized to act on behalf of SCP.
- 1.2.20 “Final Completion” is defined as 100% completion of all Work described by or reasonably inferred from the Project Criteria and Contract Documents, including but not limited to all a) Punch Lists, b) Close-Out Documents, c) SCP training/start up activities, and d) third party commissioning.
- 1.2.21 “General and Administrative Overhead Rate” or “G&A” – is the CMAR’s offsite and / or home office overhead rate. It must be calculated and audited by an outside independent accounting firm annually in accordance with Federal Acquisition Regulations (FAR) part 31. It includes but is not limited to the following costs:
- a) Corporate management,
 - b) Corporate quality management,

- c) Corporate safety management,
 - d) Treasury and cash management,
 - e) Financial and transactional accounting,
 - f) Employee benefit management,
 - g) Internal audit,
 - h) Corporate taxes,
 - i) Risk management / insurance administration,
 - j) Human resources management.
- 1.2.22 “Guaranteed Maximum Price” (“GMP”) is the dollar amount that CMAR guarantees to be the maximum amount due from SCP to CMAR under the Agreement for Construction Phase Services. It is the sum of the following
- a) “Direct Construction Costs”
 - b) “Construction General Conditions”
 - c) Allowances”
 - d) “Contractor Contingencies”
 - e) “Indirect Costs”
 - f) "Construction Phase Fee”
- 1.2.23 “Hazardous Materials” are defined as any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or for which the handling, remediation, or disposal are regulated by applicable Legal Requirements. Where applicable, the term Hazardous Waste shall have the meaning provided for in Section 1004 of the Solid Waste Disposal Act (42 USC, Section 6903) as may be amended from time to time.
- 1.2.24 “Indirect Construction Cost” is the sum of all applicable insurance costs, bond costs and applicable sales or use taxes, and excludes the Construction Phase Fee.
- 1.2.25 “Legal Requirements” include all regulations, policies, procedures and practices of SCP and all applicable rules, laws, codes, ordinances and regulations of any government or quasi-government entity, whether federal, state or local, having jurisdiction over the Work, the practices involved in the Work, or any other work performed.
- 1.2.26 “Partnering” or “Teaming” is a mutual effort by all parties involved in the Project, principally SCP, the Design Professional, the Construction Management Professional, and CMAR, to cooperate and coordinate efforts to achieve the final result intended by the Project Criteria. All involved use their expertise for the benefit of all. Partnering requires flexibility and appreciation of the positions of other parties and willingness to make compromises for the benefit of all. The Engineer has the exclusive right to decide whether or not to use Partnering on the Project and will indicate its decision on this during the Pre-Construction Phase.
- 1.2.27 “Physical Work” is the performance of physical activities at the Site during the Pre-Construction Phase intended to support development of the Design Documents. Physical Work at the project site may include, but is not limited to, verifying existing

conditions, testing/validating construction/repair methods, providing access for further inspection, etc.

- 1.2.28 “Pre-Construction Services Phase Fee” includes all direct and indirect costs of CMAR in providing the Pre-Construction Services until completion of the Construction Documents and the award of all bid packages, plus associated overhead and profit, excluding any Physical Work cost that may be authorized.
- 1.2.29 “Pre-Construction Services” includes the services to be performed by CMAR under this Agreement during the Pre-Construction Phase, including those services identified in Section 2.2 and those listed in the Project Program.
- 1.2.30 “Project Budget” is the total cost to SCP for the Project, including the Design Professional, the Construction Management Professional, CMAR’s Pre-Construction Services Phase Fee, the GMP (including CMAR’s Construction Phase Fee, Construction services, Allowances and any and all Contingencies), other consultants, furniture, fixtures, and equipment, Site acquisition, permit fees, management fees, and other incidentals required to achieve Final Completion of the Project.
- 1.2.31 “Project Criteria” are developed by or for SCP to describe SCP’s requirements and objectives for the Project, including use, space, price, time, Site, utility, parking, and expandability requirements, as well as all submittal requirements and other requirements affecting CMAR’s performance of its Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project-specific technical materials and requirements prepared by or for SCP.
- 1.2.32 “Project Team” consists of the Engineer, DP, and CMAR.
- 1.2.33 “Punch List” means those minor items of Work identified and listed by the Design Professional or the Construction Management Professional and agreed to by Engineer to be completed by CMAR after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended.
- 1.2.34 “Savings” is the difference, if any, between the GMP and the actual “Cost of the Work”. The amount of Savings is to be determined by the Engineer with such assistance as SCP requests of CMAR and is to be based on the GMP in effect on the date of Final Completion of the Work. Any unused portions of non-lump sum items of Direct Construction Costs, Construction General Conditions, Allowances, Contractor Contingencies, and Indirect Costs will not be due to the CMAR and will remain with SCP.
- 1.2.35 “Site” is the land and other areas on which the Project is located.
- 1.2.36 “Subcontractor” is any entity or person, and his or its authorized representatives, who has a direct contract with CMAR to perform a portion of the Work.

- 1.2.37 “Substantial Completion” is the date on which CMAR’s Work, or an agreed upon portion of the Work, is sufficiently complete, as determined by the issuance of a Certificate of Substantial Completion, so that SCP can fully occupy and utilize the Project, or a portion thereof, for the purposes for which it is intended. To achieve Substantial Completion, all Work must be complete except for items included on the approved Punch List.
- 1.2.38 “Total Float” is the number of calendar days by which the Work or any part of the Work may be delayed without necessarily extending a pertinent Contract Time. It is owned jointly by SCP and CMAR.
- 1.2.39 “Value Engineering Proposal” - A modification to the Work proposed by CMAR after the Effective Date of the Agreement for the purpose of reducing the total cost of construction while still delivering a quality and functional Project. Value Engineering is part of the broader goal of obtaining optimum value for each dollar SCP spends on the Project.
- 1.2.40 “Work” is comprised of all activities required by CMAR to complete the Project as defined by the Project Criteria and Contract Documents, including the Pre-Construction Services and the Construction Phase Services, as well as procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents, or from prevailing trade usage and custom.

1.3 MUTUAL UNDERSTANDING.

SCP and CMAR agree that these provisions set forth their mutual understanding and agreement regarding the Agreement, General Conditions or subjects addressed therein.

- 1.3.1 It is understood and agreed that SCP has hired a Design Professional to design the Project. CMAR understands and agrees that the design for the Project may not be complete at: a) the time the GMP is agreed to, and b) at the time of execution of the Agreement. CMAR will be given the opportunity to make adjustment to GMP once the design is finalized.
- 1.3.2 CMAR commits to cooperate and interact with and advise the Design Professional in producing Design Documents for the Project that are acceptable to SCP, all as more fully described in the Contract Documents.
- 1.3.3 When the Design Documents are complete and requisite approvals obtained and they are accepted by SCP, the Design Documents shall be incorporated in and become part of the Contract Documents as though they were included at the time of execution of the Agreement.

SECTION 2

CMAR'S SERVICES AND RESPONSIBILITIES

2.1 GENERAL SERVICES.

- 2.1.1 CMAR Representative shall attend all Project meetings and assist the Engineer during the Pre-Construction Phase in accordance with these General Conditions. During the Construction Phase, CMAR Representative, and Superintendent as necessary, shall be at the Site at all times when Work is being performed, and shall have the necessary expertise and experience required to properly supervise the Work. CMAR Representative shall communicate regularly with the Engineer and the Design Professional and shall be vested with the authority to act on behalf of CMAR as to all matters. CMAR may only replace Representative and/or Superintendent if replacement(s) have been approved in writing by Engineer. Any superintendent, engineer, foreman, or other worker employed by the CMAR or any Subcontractor who, in the opinion of SCP or its representative, does not perform their Work in a proper and skillful manner or is disrespectful, intemperate, disorderly, or otherwise objectionable, or is not providing value commensurate with their position, shall, at the written request of SCP, be forthwith removed from the Project and shall not be employed again on any portion of the Work without the written consent of SCP.
- 2.1.2 During Construction Phase, CMAR shall provide the Engineer and the Construction Management Professional, on a monthly basis with its request for progress payment, a written status report detailing the progress of the Work during that month, including whether the Work is proceeding according to Schedule, an updated and current Critical Path Method (CPM) Schedule, an updated and current Work cash flow projection for the duration of the Project, copies of the Superintendent's daily site reports, identification of any discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution, whether health and safety issues have arisen in connection with performance of the Work, and whether other matters exist that require resolution so as not to jeopardize CMAR's ability to complete the Work for the GMP on schedule and within the Contract Time(s). CMAR's monthly report shall also include a cost tracking report in a format mutually agreed to by the CMAR and Engineer, subcontract amounts and buy-out status, and status of Contingency and Allowance usage. Additionally, CMAR shall furnish a minimum of four (4) electronic photographs, showing as much as possible of the Work accomplished each month, in JPEG or other digital format and screen pixel density approved by the Engineer. Each photograph shall be identified with the title of the work and the date of the photograph included in the file name.
- 2.1.3 Within ninety (90) days, or as otherwise approved by SCP, after executing the Agreement, CMAR shall prepare and submit to the Engineer a Critical Path Method Master Schedule (CPM Schedule) for the Work including the activities in the Design Phase and the Construction Phase. The CPM Schedule shall include three (3) weeks of SCP review time for Design Submission Documents at each subphase (30%, 60%, 90%, and 100%) and adequate time for Government Agency and for other regulatory-type

reviews and for all other necessary approvals. The CPM Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when SCP information and approvals are required and all necessary shutdowns or suspensions of SCP or separate tenant activities on the Site (if any). The CPM Schedule shall allow for multiple bid packages and fast-tracked construction as may be required by SCP and include any contemplated completion date(s) earlier than those required by the Contract Documents.

- 2.1.4 The Project Team will meet promptly after execution of the Agreement to discuss issues affecting the administration of the Work, and to implement the necessary procedures, including submittals and SCP Site activity schedules, to permit SCP, the Design Professional, and CMAR to perform their respective obligations under the Contract Documents. These tasks may be implemented by the utilization of a formal “Partnering” or “Teaming” process developed during an initial workshop that will include CMAR, SCP, the Design Professional, and their key participants. Follow-up sessions will occur every three months or as otherwise mutually agreed to ensure that all commitments are updated and being followed by all members of the Project Team. The cost of this “Partnering” or “Teaming” effort, if invoked by SCP, will be an allowable Project Cost.
- 2.1.5 CMAR shall interact and cooperate fully with the Engineer and the Design Professional during the Design Phase and Construction Phase so as to keep the Work within SCP’s budget and schedule limitations.
- 2.1.6 CMAR covenants with SCP to furnish its best skill and judgment and to cooperate with the Design Professional in furthering the interests of SCP. CMAR agrees to furnish efficient business administration and superintendence and to use its best efforts to timely complete the Work in an expeditious and economical manner consistent with the interest of SCP.
- 2.1.7 The Project Team shall cooperatively work together during all phases of the Work to achieve timely completion of the Project. CMAR shall provide leadership to the Project Team during the Pre-Construction Phase for all schedule or alternative systems issues and on all matters relating to construction and shall record and distribute minutes of meetings per Section 2.2.4.4. During the Pre-Construction Phase, CMAR shall provide to the Engineer and the Design Professional a written evaluation of SCP’s Project Criteria and Project Budget and Schedule, each in relationship to the other with recommendations on the appropriateness of each.
- 2.1.8 The Contract Documents do not create any contractual relationship between the Design Professional and CMAR or any separate contractors, consultants, Subcontractors of any sub-tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against SCP, the Design Professional or CMAR, which does not otherwise explicitly exist in the Contract Documents.

- 2.1.9 CMAR's Work during the Pre-Construction phase shall be parallel to and coincide with the 30%, 60%, 90%, and 100% subphases of the Design Professional's services. CMAR shall prepare an itemized cost estimate at the completion of each design subphase, and at other times as agreed upon by the Project Team, in a format consistent with that used by the Design Professional or in a format otherwise mutually agreed upon prior to the cost estimate preparation. CMAR shall prepare cost estimates following a format that is mutually agreed to in the Preconstruction Phase at each submittal phase after the completion of 60%, to verify that applicable portions of the Project are staying within SCP's identified budget. It is the obligation of CMAR to keep all Deliverables required of it up to date during the Pre-Construction Phase so that the Project will continue uninterrupted while progressing into the Construction Phase.
- 2.1.10 During the Pre-Construction Phase, CMAR shall provide a GMP per Article 1.3 of the Agreement, and phased GMPs if required by the Agreement. Thereafter, as the Scope of Work is further developed and defined during the Pre-Construction Phase, and costs are established for the Work, the Parties contemplate that the Scope of Work to be performed by CMAR may be adjusted by amendment or change order (Attachment 2) to the Agreement. Any such amendment or change order will define the Work to be performed by CMAR under the Agreement and may amend or add any design submission document that is not within the original Scope of Work undertaken to be performed by CMAR. The GMP and Contract Time will from time to time be adjusted, as may be necessary by such change orders or amendments.
- 2.1.11 Subject to the other provisions of these General Conditions, execution of the Agreement by CMAR is a representation that CMAR has visited the Site, satisfied himself as to the nature and location of the Work, the conformation of the ground, the type, quality and quantity of the materials to be encountered, the type of equipment and facilities needed prior to and during the prosecution of the work, the general and local conditions, and all other matters which might in any way affect the Work under this Agreement and has correlated CMAR's observations with the requirements of SCP's Project Criteria. No verbal agreement or conversation with any officer, agent or employee of SCP, before, during, or after the execution of this Agreement shall affect or modify the terms or obligations herein contained.
- 2.1.12 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents but deemed necessary for the proper completion of the Work by the Design Professional will be required of CMAR unless it is inconsistent with the Contract Documents or is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well known technical or trade meanings may be used in the Contract Documents in accordance with such recognized meanings.

- 2.1.13 The organization of the Specifications into division, section, and article and the arrangement of Drawings shall not obligate or control CMAR in dividing performance of the Work among Subcontractors or in establishing the extent of the Work to be performed by any one trade.
- 2.1.14 With respect to all Work performed by CMAR and its Subcontractors and consultants, CMAR, its Subcontractors and consultants shall keep full and detailed accounts and exercise such cost controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and subject to review by SCP. During performance of the Work and for three (3) years after Final Payment, CMAR shall retain and shall also require all Subcontractors and consultants to retain for review or audit, or both, by SCP or Legislative Auditor of the State of Louisiana (hereafter “the LA”) all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matters related to the Work. Upon request by, and at no cost to, SCP, a legible copy or the original of any or all such records as are described above shall be produced by CMAR at any time during or after the Work as SCP may request. Upon request CMAR shall submit to SCP copies of all payrolls, reports, estimates, records, change order costs and data, and any other data concerning Work performed or to be performed, materials supplied or to be supplied, including Subcontractor or consultant payment applications or invoices and such Subcontractor’s or consultant’s progress payment checks. The requirements of this section shall be provided for in all contracts between CMAR and its Subcontractors and consultants. The LA or SCP may exercise its rights under this Paragraph as often as reasonably necessary in SCP’s sole judgment to assure SCP has a complete and accurate understanding of all Project costs.

2.2 PRE-CONSTRUCTION SERVICES.

2.2.1 CONSULTATION DURING PROJECT DEVELOPMENT.

In addition to the services of CMAR listed in 2.1 above, CMAR’s Pre-Construction Services shall include, but not be limited to, the services set forth in this Section 2.2 and shall include: participation in team building, formal Partnering or Teaming if requested by SCP, development of a project management plan, providing value analysis, constructability and bid ability reviews, phasing and sequencing ideas, cash flow projections, estimating/price guarantees, and Subcontractor bid package timing and strategy. These services shall also include, but not be limited to, review of Design Documents; advice on Site use, improvements, selection of materials, building systems and equipment, long lead items, construction feasibility, availability of materials and labor, local construction activity as it relates to work schedules, and time requirements for installation and construction.

2.2.2 BUDGETING AND GUARANTEED MAXIMUM PRICE.

- 2.2.2.1 CMAR shall provide the Pre-Construction Services for the Pre-Construction Services Phase Fee set forth in the Agreement. That fee shall be billed and payable as set forth in the Agreement.
- 2.2.2.2 As provided for in Article 1.3 of the Agreement and when the design has sufficiently progressed, CMAR shall propose a GMP for the construction that is to be based on the Cost of the Work required to complete the Project. CMAR shall attach to the GMP a list of the Drawings and Specifications used by CMAR in preparing and setting the GMP and also a “Statement of All Clarifications and Assumptions” that CMAR used to supplement the information contained in the Drawings and Specifications listed by CMAR. The “Statement of All Clarifications and Assumptions” may, at the discretion of CMAR, be shown in the form of Drawings or be in narrative form or a combination of both but must in any event be complete and detailed.
- 2.2.2.3 SCP will, at its sole discretion, have the option to accept the GMP submitted by CMAR, request that CMAR submit another GMP, or reject the GMP and terminate all contracts and agreements with CMAR. In the event of such a termination CMAR shall receive payment for services it has provided to date per Section 2.2.2.1 and other reasonable termination costs approved by SCP. If CMAR is providing Pre-Construction Services at no cost to SCP as described in Section 6.1.1 of the Agreement, then CMAR will not be entitled to any amount for services provided. There shall be no amounts paid for any lost profits, lost opportunity or other similar costs.
- 2.2.2.4 Once accepted by SCP, the GMP may be revised only by an approved amendment or change order.
- 2.2.2.5 For any Contingency within the GMP, the criteria for the development of that Contingency must be acceptable to SCP.

2.2.3 COST ESTIMATES.

- 2.2.3.1 Construction Costs. All estimates of GMP, and the Schedule of Values set forth in a format that is mutually agreed to in the Preconstruction Phase shall include the following without duplication:
 - a) “Direct Construction Costs”
 - b) “Construction General Conditions”
 - c) “Allowances”
 - d) “Contractor Contingencies”
 - e) “Indirect Costs”
 - f) “Construction Phase Fee”

- 2.2.3.2 CMAR's estimates of Construction Costs shall not include sums due the Design Professional, CMAR's Pre-Construction Services Phase Fee, the costs of land, rights of way, financing or other costs which are the responsibility of SCP.
- 2.2.3.3 Prior to and while preparing its estimates of Construction Costs and the GMP, CMAR shall consult with the Design Professional to determine, to the extent possible, what materials, equipment, component systems and types of construction are to be included in the Construction Documents, to make recommendations for reasonable adjustments in the Scope of Work, and to include in the Construction Documents alternate items, as are approved by the Engineer in writing.
- 2.2.3.4 CMAR shall prepare an estimate of Construction Costs as soon as major Project requirements have been identified and update the estimate for each submittal of the Design Submission Documents specified in Section 1.2.19. For all bid packages for Construction, CMAR shall prepare a quantity take-off cost estimate based on agreed WBS structure within two weeks, or as otherwise approved by SCP, of receipt of applicable documents from the Design Professional. All estimates of Construction Costs shall make allowance for bidding and price escalation. During the Pre-Construction Phase, CMAR shall continually monitor the cost estimates to help assure that the Cost of the Work remains within the applicable portions of the Project Budget or GMP, as applicable. No construction services or Work to be performed under the Agreement shall commence until a GMP is established by CMAR, submitted and accepted by the Engineer.
- 2.2.3.5 All CMAR cost estimates shall be prepared separately and independently from the Design Professional cost estimates and shall be based on quantitative takeoffs whenever possible and shall be completed in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems, and sub-trade quote packages. The CMAR and the Design Professional will collaborate and agree on quantities based on the quantity takeoff comparison process. A lump sum estimate is not acceptable unless it is otherwise agreed to by SCP and such estimate relates to an actual Subcontractor price or bid.
- 2.2.3.6 CMAR shall submit all applicable cost estimates to the Design Professional and the Engineer for review, scope verification and reconciliation with the Design Professional's estimates of cost. If the Design Professional and CMAR cannot agree on any individual cost items, then the highest identified cost of either will be utilized and noted as such by CMAR in the submission of the cost estimate to SCP as part of the design submittal.
- 2.2.3.7 After review and scope verification of the cost estimate done by the Design Professional and/or the Engineer, CMAR shall a) notify the Engineer if it appears that the Design Professional estimate of Construction Costs will exceed

the applicable portion of the projected Project Budget or GMP as may be applicable, b) satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by SCP, and c) make reasonable recommendations for corrective action consistent with the Project Budget or GMP, as may be applicable. All such cost estimates must be within Project Budget or GMP as applicable or include reasonable recommendations for bringing the estimates within the Project Budget or GMP, as applicable, prior to final submission to the Engineer for review and acceptance. Any costs to correct Design Documents to bring the Project back within the Project Budget or GMP, as applicable, shall not be borne by CMAR.

2.2.3.8 Design Professional/CMAR Cooperation: The Design Professional, by the terms of its agreement with SCP, is obligated to provide reasonable cooperation to CMAR in the development of estimates of Construction Costs and the GMP. Similarly, CMAR shall provide reasonable cooperation to the Design Professional in the development of estimates of Construction Costs and the GMP. At each design subphase, the Design Professional and CMAR shall reconcile their cost estimates with each other and SCP no later than seven (7) calendar days, or as otherwise approved by SCP, after the completion of their respective cost estimates to assure the Engineer that the Project Cost is within the designated budget.

2.2.4 OTHER PRE-CONSTRUCTION SERVICES.

2.2.4.1 CMAR shall review the Drawings and Specifications as they are being prepared and recommend alternative methods whenever design details affect construction feasibility, schedules or cost. However, nothing contained in this section 2.2.4.1 shall be construed to require CMAR to provide design services.

2.2.4.2 CMAR shall make recommendations to the Engineer and the Design Professional regarding the division of work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and the like.

2.2.4.3 Coordinating with the Design Professional, CMAR shall provide a written Constructability Review of all Drawings and Specifications, in a form acceptable to the Engineer. The Constructability Review shall (a) minimize areas of conflict, errors, omissions, and overlapping of the Work to be performed by the various Subcontractors, (b) confirm that the full Scope of Work has been included in the Drawings, (c) endeavor to minimize cost and value engineer proposals where appropriate, and (d) allow for phased and/or fast-track quote packages and construction, as required.

2.2.4.4 CMAR shall attend all regular meetings with the Engineer and the Design Professional and such additional meetings as the Engineer may request. All regular meetings shall be scheduled by the Design Professional and approved by the Engineer. All additional meetings shall be scheduled by the Engineer.

At a minimum, CMAR shall attend the following meetings and shall be responsible for leading the meeting or issuing meeting minutes as noted in the chart below. Additional meetings may be required by the Engineer or may be necessary in the normal course of business. Such additional meetings shall not be additionally compensated by SCP to CMAR unless agreed to in advance in writing by the Engineer and unless the scope of such meetings could not have reasonably been expected given the scope of the Project.

MEETING	LEAD	FREQUENCY	ISSUE MINUTES
Kickoff	SCP	One	DP
Design Phase Progress	DP	As-needed	DP
Deliverables Format	DP	Once	DP
Deliverables to User Groups	DP	As-Needed	DP
Plan Review	SCP	Minimum Four	DP
GMP-Setting	SCP	As-Needed	DP
Design Related Subject - Before 100% CD Set	DP	As-Needed	DP
Design Related Subject - After 100% CD Set	CMAR	As-Needed	CMAR
Pre-Construction	SCP	One	DP
Construction Phase Progress	CMAR	Bi-weekly	CMAR
Closeout	SCP	One	CMP
Others as required by SCP	TBD	TBD	TBD

2.2.4.5 CMAR shall investigate and recommend materials and equipment that could be purchased directly by SCP. In providing its recommendations, CMAR will consider the impact of any long lead times associated with any materials or equipment needed on the Project and the potential cost-savings from mass purchasing power. In addition, CMAR will recommend a schedule for such purchases, after coordination with the Design Professional regarding the timetable for preparation of Construction Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates. CMAR shall coordinate with the Engineer regarding the installation of any such purchased materials and equipment.

2.2.4.6 Subcontractor Selection.

2.2.4.6.1 Pre-Construction Phase. If the Engineer determines it will be to the advantage of SCP or the Project to select certain subcontracting trades to participate in the design process during the Pre-Construction Phase, CMAR may

add Subcontractors as Subconsultants to CMAR team. The inclusion of any and all Subcontractors shall require the approval of the Engineer. The addition of Subcontractors to the Pre-Construction Phase shall not be construed as approval of that Subcontractor to perform services during the Construction Phase. The addition and approval of subconsultants shall not be construed as authority to increase the Pre-Construction Services Phase Fee unless the Agreement is amended. When selected, the Subconsultant key personnel and their fee rates, if applicable, shall be added to CMAR's proposal in Exhibit B.

For Subcontractors selected for Pre-Construction Services, CMAR must establish to the Engineer's satisfaction that the Subcontractor's price submission and subsequent construction costs are reasonable and appropriate by following the procedures outlined in Section 2.2.4.6.3.

2.2.4.6.2 Construction Phase. CMAR shall, with the assistance of the Engineer and the Design Professional, prepare the necessary and appropriate bidding information, bidding forms, and pre-qualification criteria for bidders; develop Subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. CMAR shall review all potential Subcontractors with the Engineer and the Design Professional and obtain the Engineer's approval of the pre-qualification of any Subcontractor in accordance with the Engineer-approved Subcontractor Selection Plan. If CMAR becomes aware, prior to any bid date, that less than three (3) pre-qualified Subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified Subcontractors are likely to exceed the current Schedule of Values or estimate of Construction Cost, CMAR shall promptly notify the Engineer.

2.2.4.6.3 CMAR shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Engineer and the Design Professional concerning which bids from pre-qualified Subcontractors will be accepted and awarded. The Engineer and the Design Professional shall be notified of the time and place of all bid openings and shall be permitted to attend such openings with their representatives and guests. A proposal to accept other than a low lump sum bid shall be justified in writing by CMAR with sufficient detail to satisfy the Engineer and be subject to prior written approval by the Engineer. Subcontractor proposals will be evaluated and awarded for best value overall to the Project. When CMAR proposes to accept a subcontract bid other than the low bid, CMAR must justify such action in writing and obtain written approval from the Engineer before making the subcontract award. Once approved by the Engineer, no Subcontractor may be replaced by CMAR without SCP's prior approval and any change in cost to CMAR will not be a responsibility of SCP and there will be no increase in GMP or contract price by reason of such change of cost. Within thirty (30) calendar days after award, one fully executed subcontract for work or services on this Project shall be furnished

to SCP together with all special or supplementary conditions applicable to the subcontract work.

2.2.4.7 CMAR Self-Performance.

2.2.4.7.1 CMAR must disclose to the Engineer, upon initiation of Pre-Construction services, any portions of the Work that are to be considered for potential self-performance. CMAR will submit a proposed price (the “Price Submission”) for each of these portions of the construction work.

2.2.4.7.2 To evaluate CMAR’s Price Submission on self-performed work, the Engineer may do any or all of the following at the Engineer’s discretion: (i) engage an estimator selected by the Engineer to prepare an independent estimate of this portion of the construction work; (ii) engage the DP or other consultants to do a construction market study to confirm construction market impacts to the cost of this portion of the construction work, or (iii) take other action to evaluate CMAR’s Price Submission. In any event, CMAR is responsible to establish to the Engineer’s satisfaction that CMAR’s Price Submission is reasonable and appropriate. If the Engineer is satisfied that CMAR Price Submission is reasonable and appropriate, SCP will advise CMAR that CMAR is selected for that portion of the construction work.

2.2.4.7.3 If, at the conclusion of the review of CMAR’s proposed price, the Engineer is not satisfied that CMAR’s Price Submission is reasonable and appropriate, the Engineer will so advise CMAR and CMAR will proceed in the following manner: There will be a normal Subcontractor bid competition for selection of the Subcontractor to perform this portion of the construction work, in accordance with the procedures in section 2.2.4.6.2, except that, notwithstanding any other provision of CMAR Design Phase Services Contract Documents to the contrary, (i) CMAR’s Price Submission will be CMAR’s bid for that portion of the construction work in the Subcontractor bidding process; (ii) CMAR must obtain bids for that portion of the construction work from a minimum of two other pre-qualified Subcontractors, (iii) the Subcontractor bids for that portion of the construction work must be delivered to the Engineer rather than CMAR, and (iv) the Engineer will decide which bid to accept, in accordance with Section 2.2.4.6.2. No bid, or decline to tender a bid by others can be taken as a bid, upon Engineer’s approval

2.2.4.7.4 CMAR shall perform all other pre-construction services as identified in the Project Program.

2.3 LEGAL REQUIREMENTS.

2.3.1 CMAR shall perform all Work in accordance with the Legal Requirements and the General Conditions and otherwise shall provide all notices applicable to the Work. It is the responsibility of CMAR during the Pre-Construction Phase to assist the Design

Professional and SCP to ascertain that the Construction Documents under preparation are in compliance with all Legal Requirements.

2.4 GOVERNMENT APPROVALS, REGULATIONS, AND PERMITS.

- 2.4.1 Unless otherwise provided in the Contract Documents, CMAR has the responsibility to obtain and pay for all necessary permits, approvals, licenses, government charges, plan review fees and inspection fees required for the prosecution of the Work. CMAR shall follow all SCP permitting and inspection procedures.
- 2.4.2 All permits of a temporary nature and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by CMAR. All costs associated with obtaining any temporary permits will be payable from the Construction General Conditions.
- 2.4.3 SCP will obtain permits and/or letters of no objection from governmental agencies for the permanent work including those from the Corps of Engineers, Lake Borgne Basin Levee District, LADOTD, LADNR, LADEQ, U. S. Coast Guard, etc. and railroad companies as applicable. A St. Bernard Parish building permit is not required. CMAR shall comply with all local ordinances applicable to construction operations.
- 2.4.4 If the USCG puts the Regulated Navigational Area (RNA) into effect, it is the responsibility of CMAR to be aware of this and comply. RNAs are water areas within a defined boundary for which regulations for vessels navigating within the area have been established. The District Commander can issue RNAs to control vessel traffic in a place determined to have hazardous conditions. RNAs usually prescribe what type or size of vessels may enter an area or in what manner they must navigate. —All costs associated with compliance to RNA will be handled as an Allowance, Contingency, or Change Order.
- 2.4.5 If any regulatory entity such as USCG, USACE, SLFPAW, SLFPAE requires any pre-storm mitigation that directs CMAR to de-mobilize any or all of its equipment, staging, materials, etc. as a precaution to any flood or wind damages impacting navigation, flood protection floodwalls and levees, or general public safety. All costs associated with compliance to agency pre-storm mitigation compliance will be handled as an Allowance, Contingency, or Change Order.
- 2.4.6 Prior to any work being connected to receive service from any utility, whether owned privately or publicly, all requirements of that utility shall be complied with by CMAR, who shall be held responsible for determining the extent of such requirements, and who shall pay all fees and charges involved, unless SCP has made other arrangements under the terms of this Agreement.

2.5 CMAR’S CONSTRUCTION PHASE SERVICES.

- 2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of SCP or of a separate Contractor(s), CMAR’s Construction Phase Services shall include: team management and coordination, scheduling, and change order management, submittal process management, subcontracting, field management, safety program development and management, close-out process, and warranty period services. This responsibility shall include providing, through itself or its Subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities needed to permit CMAR to complete construction of all Work consistent with the Construction Documents.
- 2.5.2 CMAR shall perform all construction work, services, and activities efficiently and with the requisite expertise, skill, quality and competence necessary to satisfy the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.
- 2.5.3 CMAR shall only employ Subcontractors (of any tier) who are properly licensed and fully able and committed to performing the Work in compliance with the Construction Documents and with the same or higher degree of skill, quality, and competence as CMAR. Any Subcontractors performing work valued at \$50,000 or more shall be licensed in accordance with L.A. R.S. 37:2163 and 2150.1.
- 2.5.4 CMAR shall be fully responsible for the Work of its Subcontractors and any of their acts and omissions in connection with the performance of their work. Nothing in the Contract Documents is intended or shall be deemed to create any legal or contractual relationship between SCP and a Subcontractor (of any tier). In addition, nothing in the Contract Documents is intended to, or shall be deemed to create any third-party beneficiary rights.
- 2.5.5 CMAR is responsible for coordinating the activities and Work of all Subcontractors. If SCP is performing other work with separate contractors under SCP’s control, CMAR agrees to cooperate and coordinate its Work with the work of SCP’s separate contractors so that the Project can be completed in an orderly, efficient, and coordinated manner reasonably free of significant disruption to any party.
 - 2.5.5.1 SCP reserves the right to award other contracts related to the Project or to perform certain work itself. Any such other work may or may not be known to SCP or disclosed to CMAR prior to execution of the Agreement. CMAR shall afford SCP and such other contractors’ reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and CMAR shall properly coordinate its work with theirs in such manner as the Engineer or the Construction Management Professional may direct. CMAR shall also assure at its own cost reasonable access of other contractors to their site and their work. Whenever work being done by SCP

itself or by others is contiguous to the Work covered by this Agreement, the respective rights of the various interests involved shall be established by the Engineer and as mutually agreeable.

- 2.5.5.2 Upon request of CMAR, the Engineer will provide CMAR with a copy of drawings, specifications, schedules, or other needed data relating to such other contracts or work as may be necessary to meet CMAR's duty to coordinate. CMAR shall thoroughly examine these documents and shall within five (5) business days of receipt of these documents notify the Engineer in writing of any conflicts with the Work to be performed by CMAR. In no event shall such notice be given by CMAR so late as to interfere with or delay the Work to be performed by CMAR. Failure of CMAR to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims CMAR may otherwise have as a result of the necessity to coordinate CMAR's Work with other activities. If any part of CMAR's work depends for proper execution or results upon the work of any other party, CMAR shall inspect and promptly report to the Engineer any and all defects in such work that render it unsuitable for such proper execution and results. His failure to inspect and report shall constitute an acceptance of the other party's work as fit and proper for the reception of his work except as to defects which may develop in the other party's work after the execution of his work.
- 2.5.5.3 Should CMAR sustain any damage through any act or omission of any other such contractor or subcontractor, CMAR shall have no claim or cause of action against SCP for such damage and hereby waives any such claim. CMAR does not waive any claim or cause of action against any other contractor or subcontractor or SCP tenant to recover any and all damages sustained by reason of the acts or omissions of such other contractor or subcontractor. The phrase "act or omission" as used in this section shall be defined to include, but not be limited to, any delay on the part of any such other contractor or subcontractor, whether due to negligence, gross negligence, inadvertence or any other cause.
- 2.5.5.4 Should CMAR negligently cause damage to the work or property of any other contractor, subcontractor, or tenant of SCP, CMAR shall upon receiving due notice of damage promptly attempt to settle with such other contractor, subcontractor, or SCP tenant by agreement, repair or otherwise to resolve the dispute. If any such separate contractor sues or initiates a proceeding against SCP on account of any damage alleged to have been caused by CMAR or its Subcontractors, SCP shall notify CMAR who shall at his own cost defend such proceedings, or pay the costs of SCP defending such proceedings, and if any judgment or award against SCP arises therefrom, CMAR shall pay or satisfy it and shall reimburse SCP for all attorney's fees and court or other costs which SCP has incurred in connection with the matter.

2.5.6 CMAR shall keep the Site free from debris, trash and construction waste to permit CMAR to perform its construction services efficiently, safely and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage/staging areas. CMAR shall also be responsible for and take precautions and measures to fully secure, safeguard and protect the Work during the Construction Phase. CMAR shall provide and maintain all necessary flagmen, watchmen, barricades, warning lights, signs and other suitable protective devices, together with marking buoys and other navigational aids, as required, and shall take all other necessary precautions for the protection and safety of the work and the public against personal injury (including death) and property damage. He shall continuously maintain adequate protection of all Work from damage, and he shall take all reasonable precautions to protect SCP's properties from damage or loss arising in connection with this Agreement. He shall be liable for any and all damage, injury or loss resulting from his failure to provide such necessary protective precautions, except such as may be directly due to or caused by agents or employees of SCP. He shall adequately protect adjacent private and public property. Unless previously released of responsibility by SCP, CMAR's responsibility to secure, safeguard and protect the Work and Site shall continue until Final Completion and final acceptance by the Engineer.

2.5.7 CONTROL OF THE WORK.

2.5.7.1 CMAR shall supervise and direct the Work of his employees and Subcontractors and coordinate the Work with the activities and responsibilities of SCP and the Design Professional so as to complete the Work in accordance with SCP's objectives of cost, time and quality as set forth in the Contract Documents.

2.5.7.2 CMAR shall establish an on-site organization with lines of authority to carry out the overall plans for completion of the Work.

2.5.7.3 CMAR shall schedule, notice, conduct, and take and distribute minutes of progress meetings at which the Engineer, the Design Professional, and CMAR can discuss jointly such matters as procedures, progress, and problems. The frequency of such meetings shall be as directed by the Engineer.

2.5.9 DAILY LOG.

2.5.9.1 CMAR shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form pre-approved by the Engineer. In that log CMAR shall document all activities at the Work Site, including, but not limited to:

- a) Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job Site, and any other weather conditions which adversely affect Work at the Site;
- b) Soil conditions which adversely affect Work at the Site;
- c) The hours of operation by CMAR and individual Subcontractor;

- d) The number of CMAR and Subcontractors present and working at the Site, by subcontract;
- e) The equipment at the Site;
- f) A description of the Work being performed at the Site;
- g) Any delays, disruptions or unusual or special occurrences at the Site;
- h) Materials received at job Site;
- i) A list of all visitors at the Site; and
- j) Any other information relevant to activities on the Site that day.

2.5.9.2 CMAR shall provide copies of the daily logs to the Engineer on a weekly basis. The daily log shall not constitute written notice to SCP of any event or occurrence when such notice is required by the Contract Documents.

2.5.9.3 Any changes affecting previously approved Work shall require prior written approval of the Engineer.

2.5.10 SUPERVISION AND CONSTRUCTION PROCEDURES.

2.5.10.1 CMAR shall supervise and direct the Work, using CMAR's best skill and attention. CMAR shall be solely responsible for the coordination and accomplishment of all portions of the Work under the Contract Documents.

2.5.10.2 CMAR shall be responsible to SCP for the acts and omissions of CMAR's employees, Subcontractors of all tiers, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with CMAR.

2.5.10.3 CMAR shall not be relieved from his obligation to perform the Work in accordance with the Contract Documents either by the activities or duties of the Design Professional, CMP, or the Engineer in his administration of this Agreement, or by inspections, tests or approvals required or performed by persons other than CMAR. Nothing contained in this paragraph shall preclude CMAR from asserting any rights he may have under this Agreement in the event of unreasonable delays to CMAR in the conducting of any inspections, test, approvals, or other actions by the Design Professional, CMP, or the Engineer upon which CMAR is dependent.

2.5.10.4 CMAR shall employ a competent SCP-approved Superintendent and necessary assistants, who shall be in attendance at the Project Site during the progress of the Work. Said Superintendent shall have full authority from CMAR to carry out all orders given by SCP and shall exercise active supervision of all work performed during the Construction Phase under this Agreement, including work subcontracted. CMAR shall also employ CMAR Representative (approved by SCP) together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction work. Once designated, the Superintendent and CMAR Representative shall not be changed

except with the prior consent of SCP, unless the Superintendent or the CMAR Representative proves to be unsatisfactory to SCP or ceases to be in CMAR's employ. The Superintendent and the CMAR Representative shall represent CMAR and all communications given to the Superintendent and Representative shall be binding on CMAR.

- 2.5.10.5 CMAR shall at all times enforce strict discipline and good order among his employees and his Subcontractors' employees and shall not allow employment on the Work of any unfit person or anyone not skilled in and capable of performing the task assigned to them. If any person employed on the Work shall refuse or neglect to obey the directions of CMAR, or his duly authorized agents, as to workmanship, character of the work or quality of the materials, or if he is so incompetent, disorderly or unfaithful as to interfere with the proper fulfillment of this Agreement, he shall, upon the request of the Engineer, be at once discharged and not again employed on the Work.
- 2.5.10.6 CMAR shall at all times allow SCP, the Design Professional, or any other designated representatives access to the construction work to observe progress and inspect the quality of work and conformance to the Construction Documents.
- 2.5.10.7 Any Work required to be inspected by the Design Professional and/or the Engineer prior to being covered, which is covered up without prior inspection or without prior consent of the Design Professional and/or SCP, must be uncovered by CMAR, if requested by the Design Professional or the Engineer, and then re-covered at no cost to SCP, notwithstanding the provisions of the following Section.
- 2.5.10.8 CMAR shall notify the Engineer and the Design Professional in writing at least five (5) business days prior to the time at which SCP or the Design Professional must be present to perform an inspection. Failure to provide such notice shall make CMAR solely responsible for all consequences, including back-charges for subsequent re-inspection, of non-inspection and any required access to or uncovering of such Work.

CMAR shall advise the Engineer and the Design Professional of any additional inspections required by other entities, including but not limited to any Authority Having Jurisdiction (AHJ), and shall follow those entities' required inspections procedures. Failure to provide such notice to the Engineer, the Design Professional, or any other entity requiring inspection, shall make CMAR solely responsible for all consequences, including back-charges for subsequent re-inspection, of non-inspection and any required access to or uncovering of such Work.

2.5.11 ADMINISTRATION.

- 2.5.11.1 Except as may be expressly provided to the contrary in the Contract Documents, the CMAR Representative(s), with a primary contact designated, shall forward all written communications and all documents simultaneously to SCP's Representative(s) and the Design Professional's Representative(s) as designated.

2.5.12 DRAWINGS AND SPECIFICATIONS.

- 2.5.12.1 CMAR shall study and compare the Construction Documents prior to beginning work on each phase or portion of the Work and immediately report to the Design Professional and the Engineer any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

- 2.5.12.2 The Construction Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Where required, CMAR shall perform no portion of the Work without having shop drawings, product data or samples approved; any Work performed in violation of this provision will be solely at CMAR's risk regardless of the Design Professional's and/or the Engineer's knowledge of such Work being performed.

- 2.5.12.3 The Construction Documents shall be interpreted as being complementary, requiring delivery by CMAR of a complete Project, or a designated portion thereof. Any requirement in any one of the Construction Documents is as binding as if it were included in all Construction Documents. In the event of any conflict or ambiguity, perceived or real, CMAR shall request an interpretation by the Design Professional before performing the Work. Generally, the Specifications ("Specifications") address quality, types of materials and contractual conditions while the Drawings ("Drawings") show placement, sizes, and fabrication details of materials. In the event a conflict is discovered in the Construction Documents, the priorities stated below shall govern and control:

- a) Addenda shall govern over all other Construction Documents;
- b) Subsequent addenda shall govern over prior addenda, but only to the extent modified;
- c) In case of conflict between Drawings and Specifications, the Specifications shall govern;
- d) Conflicts within the Drawings:
 - (1) Schedules, when identified as such, shall govern over all other portions of the Drawings.
 - (2) Specific notes shall govern over all other notes and all other portions of the Drawings, except the schedules described in 2.5.12.3.d (1) above.
 - (3) Larger scale drawings shall govern over smaller scale drawings.

- (4) Figures or numerical dimensions shall govern over dimensions obtained by scaling.
 - e) Conflicts within the Specifications: These General Conditions shall govern over all sections of the Specifications except for specific modifications thereto that may be stated in Special Conditions or addenda. No other section of the Specifications shall modify these General Conditions; and
 - f) In the event provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern;
- 2.5.12.4 If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. That is to say, a) "minor detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial, and b) the quality and quantity of the parts or materials so supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts or materials otherwise set forth in the Construction Documents.

2.5.13 SUBMITTALS, DRAWINGS AND SHOP DRAWINGS.

- 2.5.13.1 CMAR shall maintain at the Site, for the use of the Engineer, CMP, and of the Design Professional, one copy of all Drawings, Specifications, bulletins, addenda, amendments or change orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their modifications, if any, in good order and marked daily by CMAR to record all approved changes made during construction. All of these shall be turned over to the Construction Management Professional by CMAR at the time of Substantial Completion for the purpose of the Construction Management Professional assembling and correlating the material for use by SCP.
- 2.5.13.2 CMAR shall submit to the Design Professional, with such promptness as to cause no delay in its Work or in the work of any other contractor, all submittals and shop drawings as are required by the Construction Documents or as are necessary to illustrate details of the Work. Prior to beginning Work and as the first submittal, CMAR shall submit a submittal register, in a format approved by the Engineer, of the items and materials for which submittals are required by the Agreement.

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

- a) Date of Submission
- b) Name of Project
- c) Location of Project
- d) Branch of Work (Specification Section)
- e) Project Number
- f) Name of Submitting CMAR
- g) Name of Subcontractors
- h) Revision Number
- i) If a drawing, an appropriate drawing number.

At the request of SCP, identified submittals shall be submitted to the Engineer for its review concurrent with review of same by the Design Professional. During the Construction Phase CMAR shall promptly provide the Engineer with an electronic copy of all approved submittals.

2.5.13.4 All Subcontractor submittals and shop drawings shall be reviewed by CMAR prior to being submitted to the Design Professional and each shall bear a written statement by CMAR that the submittals and shop drawings are consistent with the Construction Documents and other Contract Documents or, if not totally consistent, shall bear a written statement indicating all variances from the Construction Documents and other applicable Documents. Any submittals or shop drawings submitted without the statements will be returned for resubmission; and such submittals or shop drawings will be considered as not having been submitted, and any delay caused thereby shall be CMAR's sole responsibility. This review by CMAR of Subcontractor submittals and shop drawings shall not be construed as CMAR approval of the design therein except that it shall be a representation that the letter accompanying the submittal or shop drawings does indicate all variations from the Construction Documents and other Contract Documents as required by section 2.5.13.5.

2.5.13.5 CMAR shall include with submittals and shop drawings, a letter to the Design Professional, with concurrent copy to the Engineer, indicating all variances from the Design Professional's Drawings and Specifications. Failure to so notify the Design Professional of such variances will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the Design Professional, the variances are not acceptable, CMAR must furnish the item as specified or as indicated on the Construction Drawings.

2.5.13.6 It is CMAR's obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and shop drawings shall indicate in detail all parts

of an item of Work, including erection and setting instructions and engagements with Work of other trades or other separate contractors.

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

2.5.13.8 The Design Professional shall review and approve submittals and shop drawings and return them to CMAR within fourteen (14) calendar days of receipt unless otherwise previously agreed in writing. For scheduling purposes, CMAR must assume a 14-day review period for each submittal or set of shop drawings, and ten (10) calendar days for resubmittals, except for complex submittals identified by the Design Professional as having significant deficiencies, wherein the resubmittal turnaround time will be within fourteen (14) calendar days. If review and approval are delayed beyond fourteen (14) calendar days, the Design Professional shall notify CMAR and the Engineer in writing stating the reason for the delay. Approval shall not relieve CMAR from the responsibility for variances from the Drawings and Specifications, unless it has been called to the Design Professional's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of SCP to effect an improvement in the Work and does not increase the GMP or Contract Time. Any such modification is subject generally to all other provisions of the Construction Documents and is without prejudice to any and all rights under any surety bond. Submittals and shop drawings will be returned stamped with one of the following:

- a) Conforms with Concept- Reviewer found no objectionable deviations and it conforms with the design concept
- b) Conforms with Concept as Noted- Reviewer found no major deviations from the Construction Documents. Minor discrepancies or deficiencies were noted onto the submittal or drawing. Corrected Copies are not required for resubmittal, however the item is to be furnished in accordance with the notes. If contractor, supplier, or manufacturer takes exception to any of the notes, then corrected or supplemental data is to be resubmitted.
- c) Revise and Resubmit- Reviewer found major discrepancies or deficiencies such that the submittal or shop drawings must be corrected to comply with the Agreement and resubmitted.
- d) Not Accepted- Reviewer has determined the item submitted does not meet the requirements of the Agreement and correct data must be resubmitted.

2.5.13.9 If the Design Professional returns a submittal or shop drawing to CMAR with the notation “Not Accepted” or “Revise and Resubmit”, CMAR, so as not to delay the Work, shall promptly resubmit a submittal or shop drawing conforming to the requirements of the Construction Documents and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the Design Professional. Any other differences between the resubmittal and the prior submittal shall also be indicated by CMAR on the shop drawing and on the resubmittal as a special note.

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

2.5.14 MATERIALS, PRODUCT SAMPLES, TESTS, AND CERTIFICATES.

2.5.14.1 CMAR shall furnish product samples of all items requested or required by the Specifications. Product samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the Design Professional and the Engineer. The Design Professional and/or the Engineer will review product samples in accordance with Section 2.5.13 above.

2.5.14.2 Each Product Sample must be accompanied by a letter of transmittal containing the following information:

- a) Date of Submission
- b) Name of Project
- c) Location of Project
- d) Branch of Work (Specification Section Number)
- e) Project Number
- f) Name of Submitting CMAR
- g) Name of Subcontractor

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

2.5.14.4 No tests, inspections or approvals performed or given by the Engineer or the Design Professional or others acting for SCP or any agency of Federal, State or Local government nor any acts or omissions by SCP or the Design

Professional in administering this Agreement shall relieve CMAR from its duty to perform the Work in accordance with the Contract Documents and all applicable law or regulation or code.

- 2.5.14.5 Unless the Design Professional is authorized at the time of submittal to return samples at CMAR's expense, rejected samples will be destroyed.
- 2.5.14.6 After delivery of materials by CMAR, SCP may make such tests, as it deems necessary and at its expense, with samples required for such tests being furnished by and at the cost of CMAR. Any test is for the benefit of SCP and shall not relieve CMAR of the responsibility for providing quality control measures to assure that Work performed strictly complies with the Construction Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.
- 2.5.14.7 Materials, workmanship, equipment or accessories may be rejected on the basis of the test results even though general approval has been previously given. If items have been incorporated in Work, SCP shall have the right to cause their removal and replacement by items meeting Construction Document requirements, with the cost of such removal and replacement being done by CMAR and not SCP, or to demand and secure appropriate reparation to or price adjustment for the benefit of SCP from CMAR.
- 2.5.14.8 CMAR shall be responsible for all materials received for the Work, including materials furnished him by SCP, and he shall take all necessary precautions to protect same from loss and damage.
- 2.5.14.9 CMAR is encouraged to recommend specific materials, equipment, machinery, and other products for incorporation into the Work during the Pre-Construction Phase of the project so they may be included in the Construction Documents. During the Construction Phase, CMAR may suggest alternates from what is specified in the Construction Documents. Alternate materials, equipment, machinery or other products, of well-known manufacture, equal in every respect to those specified, may be used, when approved in advance of their use by the Engineer. All substitutions shall be compatible with other items required for the Work, and equality with specified items shall be as determined by the Engineer, predicated upon the alternate item or items meeting all requirements embodied in those specified. Every substitution, even though approved by the Engineer, shall remain the full responsibility of CMAR. All items shall be handled, applied or installed in strict accordance with manufacturer's recommendations and instructions and with the Construction Documents.

All requests for substitutions shall be submitted in writing by CMAR, and the Engineer's decision will be rendered to CMAR in writing. All requests must be accompanied by complete manufacturer's literature, Drawings if necessary, and

Specifications, covering the properties and use of the item or items to be substituted.

2.5.15 AS-BUILT DRAWINGS.

2.5.15.1 Prior to Final Payment, CMAR shall complete and turn over to the Engineer the As-Built Drawings kept current at the Project Site by CMAR. Those As-Built Drawings shall consist of a complete set of drawings in the latest revision, which clearly indicate in red all field changes that were made during contract performance to adapt to field conditions, changes resulting from amendments or change orders and all buried and concealed installation of piping, conduit and utility services, with dates and authorization for each change. All buried and concealed items both inside and outside the facility shall be accurately located on the As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built Drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color. CMAR shall review and reconcile details of the As-Built Drawings with SCP's representative monthly, or as otherwise approved by the Engineer. As-Built Drawings may be maintained in hard copy or in digital form pre-approved by the Engineer.

2.5.15.2 Prior to Final Payment, CMAR shall complete and turn over to the Engineer final surveys of each aspect of the project. CMAR shall submit electronic files in a software and format approved by the Engineer. Surveys shall show x, y, and z coordinates for all structures, utilities, and other site features both underground and above-ground. Survey details such as grid spacing, points on structures, and stationing for linear objects shall be coordinated and approved by the Engineer.

2.5.16 SCHEDULE AND COORDINATION.

2.5.16.1 CMAR shall schedule and coordinate the Work of all of its Subcontractors on the Project including their use of the Site. CMAR shall keep the Subcontractors informed of the Project CPM Schedule to enable the Subcontractors to plan and perform their work properly.

2.5.16.2 At the time of the submission of the GMP, CMAR shall submit to the Engineer a detailed CPM Schedule for the Work, which shall provide for the expeditious and practicable execution of the Work. The CPM Schedule shall be consistent with and build upon any previous schedules issued during the Pre-Construction Phase. The CPM Schedule is not to exceed time limits current under the Contract Documents.

2.5.16.3 The CPM Schedule required for the performance of the Work shall include reasonable detail including a time scaled network and computer printout in accordance with the following requirements:

- a) no activity shall be longer than twenty-one (21) calendar days (i.e. task line item duration in the CPM Schedule) in length except fabrication and delivery activities;
 - b) each activity must be logically tied to another activity to show its interdependency with other activities;
 - c) installation activities must be logically tied to submittal/approval, fabrication and delivery;
 - d) only a single critical path shall be allowed; and
 - e) all activities on the schedule must be clearly designated.
- 2.5.16.4 CMAR shall prepare and keep current, for the Design Professional's approval, a timetable for submittals that is coordinated with CMAR's CPM Schedule for the Work and that allows the Design Professional the specified time to review submittals.
- 2.5.16.5 The CPM Schedule shall be revised monthly by CMAR to reflect actual conditions in the field and be transmitted monthly to SCP and the Design Professional with a Narrative Report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed. This update is to be submitted with each Application for Progress Payment. The Engineer's review of the CPM Schedule update shall not be construed as relieving CMAR of its complete and exclusive control over the means, methods, sequences and techniques of construction. CMAR understands and agrees that the monthly updated CPM Schedule will be the basis for the analysis and granting or rejection of time extensions in accordance with Section 9 of these General Conditions.
- 2.5.16.6 In addition to the monthly CPM Schedule update, CMAR's schedule shall also be revised at appropriate intervals as required by the conditions of the Work or as directed by the Engineer with a printed and electronic copy of the revision submitted to the Engineer in a format acceptable to the Engineer.
- 2.5.16.7 CMAR shall perform the Work at all times during the Construction Phase in accordance with the most recent Engineer-approved schedule and consistent with the established Contract Time.
- 2.5.16.8 It is agreed by the Parties that if CMAR submits an original or updated CPM Schedule which shows that the Project and/or individual milestone(s) for the Project will be completed earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned Total Float available for use by both SCP and CMAR.
- 2.5.16.9 It is also agreed by the Parties that since Total Float time within the CPM Schedule is jointly owned, no time extensions will be granted nor delay damages paid by SCP until a critical path activity delay occurs which extends the Work

beyond the adjusted contractual completion date. Since float time within the CPM Schedule is jointly owned, it is acknowledged and agreed by CMAR that SCP-caused delays on the Project may be offset by SCP-caused time savings which result in a critical path activity savings of time to CMAR. In such an event, CMAR shall not be entitled to receive a time extension or delay damages until all SCP-caused time savings are exhausted and the applicable contractual completion date or milestone date is also exceeded.

- 2.5.16.10 It is also agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated CPM Schedule and the current and supporting narrative as of the month the change was issued or occurred, or the delay took place.
- 2.5.16.11 Should the CPM Schedule show CMAR to be thirty (30) days or more behind schedule for the Work at any time during construction, CMAR shall, upon the Engineer's request, prepare a "Recovery Schedule" and report to explain and display how CMAR intends to regain compliance with the CPM Schedule as soon as practicable.
- 2.5.16.12 If SCP reasonably determines that the performance of the Work is behind schedule such that CMAR will be unable to achieve Substantial Completion of the Work prior to expiration of the Contract Time, SCP shall have the right, but no obligation, to order CMAR to take corrective measures necessary to expedite the progress of construction, including without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities and (iii) other similar measures reasonably consistent with the Recovery Schedule. The determination of whether the progress of the Work is behind schedule shall take into account any extensions in time to which CMAR is entitled. SCP is hereby permitted to continue use of measures reasonably consistent with the Recovery Schedule until the progress of the Work complies with the stage of completion required by the Contract Documents. SCP's right to require measures reasonably consistent with the Recovery Schedule is solely for the purpose of ensuring CMAR's compliance with the CPM Schedule. In no event shall SCP have control over, charge of or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding the rights and authority granted in this Subsection 2.5.16.12 or elsewhere in the Contract Documents. Except as otherwise agreed upon in writing via change order, CMAR shall not be entitled to adjustment in the GMP in connection with measures reasonably consistent with the Recovery Schedule required by SCP under or pursuant to this Subsection. SCP may exercise its rights under or pursuant to this Subsection as frequently as necessary to ensure that CMAR's performance of the Work will comply with the CPM Schedule and the Contract Documents. The cost of measures reasonably consistent with the Recovery Schedule will be included in the Cost of the Work.

- 2.5.16.13 No work shall be allowed to be performed at night, on weekends or on a legal holiday without advanced notification by CMAR to the Engineer and with the Engineer's written approval.

2.6 CMAR'S RESPONSIBILITY FOR PROJECT SAFETY.

- 2.6.1 CMAR recognizes the importance of performing the Work in the safest manner possible so as to prevent damage, injury or loss to (a) all individuals at or in the vicinity of the Work, whether working on or visiting the Project or Site; (b) all Work, including materials and equipment incorporated or stored on- or off-Site; and (c) all property adjacent to the Site. On that basis CMAR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.6.2 CMAR and its Subcontractors shall comply with all Legal Requirements relating to safety, as well as any SCP-specific safety requirements set forth in the Contract Documents. CMAR will immediately report, in writing, to SCP's Representative and all government or quasi-government authorities having jurisdiction over matters involving the Work, any significant injury, loss, damage or accident occurring at the Site of the Work. The Construction Industry, OSHA Safety and Health Standards (29) CFR 1926/1920), U.S. Department of Labor, Occupational Safety and Health Administration shall be made part of this Agreement. CMAR shall maintain Project safety statistics, which shall be submitted to SCP upon request.
- 2.6.3 CMAR shall obtain a Hot Works permit from SCP for any hot work and follow any requirements of such permits.
- 2.6.4 CMAR's responsibility for safety under Section 2.6 is not intended to in any way relieve CMAR's Subcontractors (of any tier) from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and their taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.7 WARRANTY

- 2.7.1 CMAR warrants to SCP that the Work under this Agreement, including all materials and equipment furnished as part of the Work, 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. CMAR's warranty obligation excludes defects caused by abuse, alterations, normal wear and tear, improper operation or unreasonable failure to maintain work by persons other than CMAR, CMAR's Subcontractors or others under CMAR's control. Nothing in this warranty by CMAR shall limit any manufacturer's warranty that provides SCP with greater warranty rights than set forth in this Section or the Contract Documents.

- 2.7.2 In addition to any other obligations herein or at law, any action against CMAR on the Agreement or on the bond, or against CMAR or the surety or both on the bond furnished by CMAR, all in connection with the Work or any designated portion thereof shall prescribe in accordance with the provisions of La. R.S. 38:2189. If any part of the Work is found not to be in accordance with the requirements of the Contract Documents, CMAR shall correct it promptly after receipt of written notice from the Engineer to do so. The Engineer shall not be required to provide notice or allow CMAR an opportunity to repair if the Engineer reasonably believes there is risk to life safety. If CMAR fails to correct nonconforming work within a reasonable time after receipt of notice from the Engineer, or if the Engineer determines that delays associated with notice and CMAR's repair may adversely affect SCP's interest, then SCP may correct or have the defective or non-conforming work corrected at CMAR's expense. If later inspection demonstrates that the defect or failure was not covered by the manufacturer's warranty, nor attributable to defective workmanship of CMAR, the cost of repairs or replacements will be for SCP's account. CMAR shall assign or properly transfer to SCP any and all manufacturer warranties it has received in its performance of the Work pursuant to this Agreement.
- 2.7.3 The Warranties identified herein do not limit or control other remedies available to SCP at law or their limitation periods, if any.

2.8 CORRECTION OF DEFECTIVE WORK.

- 2.8.1 If any portion of the Work is covered over by CMAR or its Subcontractor contrary to the request of the Design Professional or the Engineer or contrary to the Contract Documents or the applicable building standards or codes, that Work, or portion thereof, must be promptly uncovered for observation at CMAR's own expense.
- 2.8.2 If any portion of the Work, other than those portions required to be inspected by the Design Professional, the Engineer or others prior to being covered, has been covered over, the Design Professional or the Engineer may request that it be uncovered for observation. If such portion of the Work is found to be in accordance with the requirements of the Contract Documents, the cost of uncovering it shall be charged to SCP as an amendment or change order. If such portion of the Work is found not to be in compliance with the requirements of the Contract Documents, CMAR shall bear such costs to uncover, remove and replace or repair such defective work and re-cover the work.
- 2.8.3 Unless a specific written waiver of such non-conformance has been provided to CMAR, CMAR agrees to promptly correct any Work that is found not to be in conformance with the Contract Documents, whether previously inspected by SCP's representatives or not.
- 2.8.4 CMAR, upon receipt of written notice from the Engineer that the Work is not in conformance with the Contract Documents, shall, within seven (7) days (except in the case of an emergency or if the item of non-conformance is on the critical path of the CPM Schedule, which will require immediate response) commence correction of such

nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. In the event CMAR fails to commence the necessary corrective steps within seven (7) days of the notice, SCP, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period commence to correct or cause the correction of such nonconforming Work with its own or other forces. CMAR shall be responsible for all costs and expenses that SCP incurs in remedying any such Work not in conformance with the Contract Documents, including at SCP's sole discretion, any of its own staff time costs and all Design Professional or other fees incurred. The Engineer will notify CMAR of its intent to make such corrections at or before the commencement of the corrective work.

- 2.8.5 The warranty period referenced in Section 2.7 applies only to CMAR's obligation to correct Work not in compliance with the Contract Documents and shall not constitute a period of limitations with respect to any other rights or remedies SCP may have with respect to CMAR's other obligations under the Contract Documents.

SECTION 3

DESIGN PROFESSIONAL'S & CONSTRUCTION MANAGER PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

3.1 DESIGN PROFESSIONAL.

- 3.1.1 Under separate agreement with SCP, the Design Professional shall submit to SCP all required Design Submission Documents to describe the Project's essential elements. The Design Submission Documents required of the Design Professional will include Drawings, Specifications, cost estimates and other documents as may be necessary to fully identify the Project scope and materials. CMAR shall submit detailed cost estimates at specific stages of the design effort as part of the Design Submission Documents provided to SCP. At the time of the scheduled submissions, CMAR, the Design Professional and SCP shall meet and confer about the submission with CMAR and the Design Professional identifying during the meeting, among other things, the evolution of the design and any significant changes or variances from the requirements of the Contract Documents or previous design submissions, and, if any, changes in anticipated costs.
- 3.1.2 Minutes of these design review meetings will be maintained by the Design Professional and provided to all attendees for review. Following the design review meeting, SCP shall review and approve or reject the Design Submission Documents. SCP may reject full or partial design submittals that do not conform with SCP's Project Criteria, overall Project concepts, and budgets, or for any other reasonable cause consistent with the intent of the Contract Documents. Upon such rejection the Design Professional shall redesign or reengineer the portion of the design rejected. such that it meets SCP's requirements. All variances from SCP's Project Criteria must be approved in writing by the Engineer.

- 3.1.3 As necessary for the timely completion of the Work, the Design Professional shall submit to SCP for the Engineer's review and approval or rejection, Construction Documents describing the requirements for construction of the Work. The Engineer, the Design Professional and CMAR shall have design review meetings to discuss Construction Documents consistent with section 3.1.1 above, and SCP shall review and approve or reject the Construction Documents within three (3) weeks of receipt from the Design Professional.
- 3.1.4 The Design Professional will be the initial interpreter of the intent and requirements of the Construction Documents. Following a written request from the Engineer or CMAR, the Design Professional shall promptly provide a written interpretation of the intent or requirements of the Construction Documents. These initial interpretations shall be consistent with the intent of the Contract Documents.
- 3.1.5 The Design Professional will timely review and approve or take other appropriate action upon CMAR's submittals, such as shop drawings, product data and samples, to ensure conformance with the Construction Documents. Such action shall be taken with reasonable promptness as specified so as not to cause delay. The Design Professional's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.
- 3.1.6 Following consultation with, and by direction of, the Engineer, the Design Professional will take appropriate action to facilitate issuance of amendments or change orders and may authorize minor changes in the Work as defined in Section 10.3.

3.2 CONSTRUCTION MANAGEMENT PROFESSIONAL.

- 3.2.1 The Construction Management Professional will be SCP's representative during construction. All instructions and communications by the Construction Management Professional to CMAR shall be copied to the Engineer. The Construction Management Professional will, unless otherwise provided, support SCP in receipt and processing of CMAR's pay applications as described in Section 7 below and otherwise shall have authority to act on behalf of the Engineer only to the extent provided in the Contract Documents.
- 3.2.2 The Construction Management Professional and the Engineer will each have authority to reject any Work which does not conform to the Contract Documents and to require special inspection or testing. However, neither the authority to act given to the Construction Management Professional and the Engineer under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to CMAR, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 3.2.3 Based on its observations of the Work and evaluation of applications for payment, the Construction Management Professional will have the responsibility to determine the amounts owed to CMAR from time to time under and in accordance with Section 7 of these General Conditions and applicable law.

SECTION 4 SCP'S SERVICES AND RESPONSIBILITIES

- 4.1 SCP shall, throughout the performance of the Agreement, reasonably cooperate with CMAR and perform SCP's responsibilities, obligations and services in a timely manner so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.
- 4.2 SCP's Representative shall be responsible for processing and delivery of SCP- supplied information and approvals or rejections in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents. SCP's Representative shall also provide CMAR with reasonably prompt notice if and when it observes any failure on the part of CMAR to fulfill its contractual obligations, including errors, omissions or defects in CMAR's performance of the Work. Failure of SCP or its representatives to notify CMAR hereunder shall not reduce, change, lessen or alleviate in any way, the duties and obligations of CMAR under the Contract Documents.
- 4.3 The Engineer shall provide reviews and approvals or rejections of CMAR's cost estimate portion of the Design Submission Documents within three (3) weeks of receipt of those documents. The Engineer shall review documents submitted by CMAR and shall render any decisions pertaining thereto without unreasonable delay.
- 4.4 SCP is responsible for all work performed at the Project by parties under SCP's control other than CMAR or the Design Professional. SCP shall contractually require such parties to cooperate with and coordinate their activities with CMAR so as not to unreasonably interfere with CMAR's ability to complete its Work in a timely manner, consistent with the Contract Documents.
- 4.5 The Engineer shall interact and reasonably cooperate with CMAR to keep the Work within the Project Budget or GMP, as may be applicable. To that end, the Engineer will reasonably consider recommendations of CMAR to redesign the Construction Documents, include deductive alternatives or reductions in the Work (including Value Engineering Proposals), or otherwise modify the Contract Documents. If at any time, SCP, in its sole discretion, determines that the Cost of the Work cannot be kept within the Project Budget or GMP, SCP may terminate this Agreement in accordance with the Termination for Convenience provisions set forth below.
- 4.6 SCP, acting through the Design Professional and consistent with SCP's agreement with the Design Professional, shall furnish CMAR Construction Documents and other documents required for CMAR's performance of its Pre-Construction services in electronic format. Additionally, unless otherwise provided elsewhere in the Agreement, SCP will furnish to CMAR, free of charge, copies of the Construction Documents, up to a total of ten (10) sets,

upon request. If CMAR requests additional copies of the Construction Documents, they will be charged at cost, for all copies in excess of ten (10) sets.

- 4.7 Upon request, SCP will provide CMAR with a copy of the executed contract between SCP and the Design Professional. SCP will likewise, upon request, provide the Design Professional with a copy of CMAR Agreement, once executed.
- 4.8 When, in the opinion of SCP, a property boundary survey is necessary for the proper conduct of the work, SCP will furnish such survey at its expense, unless specifically provided otherwise in this Agreement.

When needed, SCP will also provide, on or adjacent to the site of the work, a base line with starting point thereon, and one or two benchmarks, but CMAR shall be responsible for making, with his own engineers, all other measurements required in laying out and controlling his work.

CMAR shall carefully preserve SCP's benchmarks, reference points and stakes, and in case of willful or careless destruction he shall be charged with the expense of restoring them, and CMAR shall be responsible for any and all mistakes that may be caused by their unnecessary loss or disturbance.

At his discretion, the Engineer may check CMAR's work for proper alignment and grade at any time, but the making of such check or checks shall not be assumed either to establish a precedent requiring similar checking by the Engineer at any other time, or to relieve CMAR from full responsibility for the correctness of his work.

SECTION 5

HAZARDOUS MATERIALS AND UNFORESEEN PROJECT SITE CONDITIONS

5.1 HAZARDOUS MATERIALS.

- 5.1.1 It is the sole responsibility of CMAR, as part of the agreed upon GMP, to properly remove and dispose of any Hazardous Materials identified as such in the Contract Documents by SCP. CMAR, upon encountering any Hazardous Materials not identified in the Contract Documents, shall stop Work immediately in the affected area and notify SCP and, if required by any Legal Requirements, all governmental or quasi-governmental entities with jurisdiction over the Project. SCP has responsibility to take the necessary measures required to properly remove and dispose of Hazardous Materials not identified in the Contract Documents. SCP will be 'generator' for hazardous materials or unforeseen hazardous materials both known and unknown.
- 5.1.2 CMAR will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in the GMP or Contract Time(s) of performance, or both, to the extent that CMAR's costs or time of performance have been adversely and materially impacted by the presence of unforeseen or undisclosed Hazardous Materials.

- 5.1.3 SCP is not responsible for Hazardous Materials introduced to the Site by CMAR, Subcontractors (of any tier) or anyone else for whom CMAR is responsible unless provision of such Hazardous Materials are called for in the Contract Documents.
- 5.1.4 CMAR agrees to indemnify, defend and hold harmless SCP and its officers, directors, employees and agents, from and against all claims, losses, liabilities, costs and expenses, including but not limited to attorney's fees and expenses, arising out of or resulting from CMAR's importation, improper handling, storage, abatement, removal or disposal of any Hazardous Materials by CMAR.
- 5.1.5 Releases of Hazardous Materials. Upon any release of any Hazardous Material in connection with the Work, whether relating to a pre-existing condition or acts or omissions of CMAR, CMAR shall take immediate action reasonably necessary to contain the release and if the Hazardous Material release is not a CMAR release, SCP will pay CMAR the reasonable costs incurred by CMAR in taking such containment action. SCP may elect to have CMAR control and carry out any containment, clean-up, removal and remediation activity needed, provided that if the release is not a CMAR release, SCP will pay CMAR for such CMAR containment activities in accordance with Section 10.4 of these General Conditions, including allowance of additional Contract Time thereunder.

5.2 UNFORESEEN PROJECT SITE CONDITIONS.

- 5.2.1 If CMAR encounters, during the performance of its Work, concealed or latent physical conditions or subsurface conditions at the Project which (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature which differ materially from the conditions ordinarily encountered and generally recognized as inherent in the sort of work provided for in the Contract Documents, CMAR shall immediately provide written notice to the Engineer apprising SCP of the unforeseen conditions encountered. CMAR shall not disturb or modify such conditions without the Engineer's prior written consent. the Engineer shall promptly investigate CMAR's notice of an unforeseen Site condition and advise CMAR of its findings and determination.
- 5.2.2 If the conditions encountered by CMAR under Section 5.2.1 are determined by the Engineer to be an unforeseen Project Site condition, CMAR will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in its GMP and/or Contract Time(s) of performance, to the extent that CMAR's cost or time of performance have been adversely impacted by the unforeseen conditions. Adjustments to GMP will be for the actual Cost of Work impact(s) and a pro rata share of fee incurred by CMAR to address and resolve the unforeseen conditions.
- 5.2.3 No claim by CMAR for an increase in the GMP or in Contract Time(s) shall be considered or allowed by the Engineer without compliance with the advance notice requirement set forth above, submission of verifiable documentation of specific direct cost impact, and an adequate opportunity for SCP to investigate. Extensions of Contract

Time(s) will be considered and allowed only when based upon submission of an updated CPM Schedule and supporting narrative showing an actual unavoidable delay to the Project Critical Path due to the unforeseen Project Site conditions.

- 5.2.4 In no event shall the Contract Time or GMP be adjusted for conditions that could or should have been identified by CMAR through its investigations or survey of existing conditions prior to submission and establishment of the GMP and the CPM Schedule.
- 5.2.5 The provisions of Section 5.2 shall also apply if CMAR, in course of the Work, finds any condition that is materially different from that designated in the Construction Documents, either in regard to work previously existing or being performed by others, or finds any material discrepancy between the Construction Documents and physical conditions of the locality, or material errors or omissions on such Construction Documents, or in the layout as given by points and instruction.
- 5.2.6 If the Engineer determines CMAR has no entitlement to an adjustment in GMP or Contract Time for what CMAR contends is an unforeseen Project Site condition, CMAR may only proceed in pursuit of its position or claim in accordance with the provisions of Section 11 of these General Conditions.

SECTION 6 INSURANCE AND BONDS

6.1 BOND REQUIREMENTS.

- 6.1.1 CMAR, after acceptance of the GMP by SCP and prior to the start of any Construction Phase Services by CMAR, shall furnish to SCP good and solvent Payment and Performance Bonds (Attachments 1.1 and 1.2), satisfactory in form to SCP, each in a sum equal to one hundred percent (100%) of the GMP, to ensure prompt and proper performance of all obligations imposed on CMAR under the Agreement, except as provided under La. R.S. 38:2216(c). The bond shall be cancelled, and the surety released only in accordance with the provision of law and this Agreement. The surety on both the Performance Bond and the Payment Bond shall agree that it shall be obligated under the Bonds to any successor, grantee or assignee of SCP with surety's prior approval.

6.2 CMAR'S INSURANCE REQUIREMENTS.

- 6.2.1 CMAR shall not commence any Work until it obtains all required insurance and delivers satisfactory proof thereof to SCP. CMAR shall not permit Subcontractors to commence Work until applicable insurance requirements have been complied with by Subcontractor.
- 6.2.2 Applicable Liability Insurance coverage assuring the adequacy of CMAR's performance and warranty obligations shall be maintained for the full warranty period specified in Section 2.7.2 and any specific guarantee or warranty available by law.

6.3 GENERAL INSURANCE REQUIREMENTS.

- 6.3.1 Insurance Companies: All insurance shall be written with insurance companies authorized and licensed to do business in the State of Louisiana and having a current A.M. Best's rating A- VII, or better. An acceptable program of self-insurance may be allowed provided CMAR provides proof of sufficient financial ability to self-insure.
- 6.3.2 Primary Insurance: All insurance required herein, except workers' compensation and professional liability, and including any excess or umbrella coverage, shall be primary and noncontributory with regard to any other insurance that may be carried by SCP for its own protection, or which may otherwise provide any insurance coverage to SCP.
- 6.3.3 Proof of Insurance: Before this Agreement becomes effective, the CMAR shall furnish to SCP's Risk Manager certificates evidencing that it has procured the insurance herein required. SCP reserves the right to require CMAR provide updated certificates of insurance, declaration pages, and/or endorsements for any of the insurance required herein at any time. CMAR shall replace all such certificates with new ones within 10 days of expiration.
- 6.3.4 Additional Insured: Except for workers' compensation and professional liability insurances, SCP shall be named additional insured on all policies required herein. The additional insured for the general liability policy shall be for both ongoing and completed operations, by means of endorsements at least as broad as ISO CG 20 10 and CG 20 37 or equivalent. Such endorsements shall be furnished to SCP's Risk Manager.
- 6.3.5 Waiver of Subrogation: For all insurance policies required herein, as well as any other insurance carried by CMAR for its protection, CMAR shall waive all rights of subrogation and shall require that its insurers waive any and all rights of subrogation against SCP. Such waiver of subrogation shall be evidenced by endorsements to the applicable policies.
- 6.3.6 Notice of Cancellation and Material Change: All policies required herein shall provide for written notice of cancellation to be sent to SCP in accordance with policy provisions. In the event of notice of cancellation of or material change in any insurance required herein, upon receiving notice of said material change, CMAR shall immediately provide written notice to SCP. All insurance notice should be sent to SCP at P.O. Box 60046, New Orleans, LA 70160, Attention: Risk Manager.
- 6.3.7 Maintaining Insurance: Except as otherwise stated herein, all insurance policies herein required shall remain in full force and effect until the completion of the Work and the acceptance thereof ("Required Insurance Period") with the exception of Builders Risk Insurance which shall end at Substantial Completion or when the Work, or portion thereof, is put to its intended use. If any insurance required herein is cancelled or materially changed and not immediately replaced during the Required Insurance Period, SCP reserves the right to purchase insurance at the expense of CMAR to protect SCP's

own interest. The furnishing of insurance shall not relieve CMAR or its contractor(s) and/or subcontractor(s) of the responsibility for losses not covered by insurance.

- 6.3.8 Subcontractor's Insurance: CMAR shall require that any and all subcontractors which are not protected under CMAR's own insurance policies maintain applicable insurance of the same nature and in the same amounts, with exceptions of excess and umbrella, as required of CMAR in this Section. SCP shall be named as additional insured on all subcontractors' insurance policies for both ongoing and completed operations by means of endorsements CG 20 38 04 13 and 20 37 or equivalent. It is the responsibility of CMAR to ensure subcontractors have the required insurance. Upon request, CMAR shall furnish to SCP proof of subcontractor's insurance. Insurance provisions required of subcontractors may be modified only upon written approval by SCP.
- 6.3.9 Subject to Revision: The amounts and types of insurance required herein shall be subject to revision at each renewal term or extension at the discretion of SCP.
- 6.3.10 No Representation or Warranty: SCP makes no representation or warranty that the insurance set forth in this section will be sufficient to protect CMAR's or any subcontractor's interests. The coverages specified below are minimum amounts. The insurance requirements under this Agreement shall in no way limit CMAR's liability, including CMAR's indemnification obligations.
- 6.3.11 Deductibles: CMAR and any subcontractor shall be liable for any deductibles or self-insured retentions it maintains under the required insurance.
- 6.3.12 Combination of Coverages: A combination of primary and excess or umbrella insurance may be used to satisfy the requirements of this section. Any excess or umbrella insurance must follow form with the underlying coverages and be primary and noncontributory with any coverage maintained by SCP.
- 6.3.13 Exceptions – Any exceptions to these insurance requirements must be approved in writing by SCP. However, if this Agreement was awarded pursuant to La. R.S. 38:2212.1(A)(1)(a), no exceptions will be allowed.

6.4 SPECIFIC MINIMUM INSURANCE REQUIREMENTS.

- 6.4.1 Commercial General Liability Insurance: CMAR and its subcontractor(s) shall procure and maintain as part of the Indirects included in the GMP, commercial general liability insurance (on an occurrence basis) with limit of liability of not less than one million dollars (\$1,000,000) per occurrence and a general aggregate of two million dollars (\$2,000,000). The aggregate limit for products and completed operations shall be not less than two million dollars (\$2,000,000). If the Work requires the use of watercraft, the watercraft exclusion shall be eliminated. If the Work will occur within 50 feet of a railroad, the exclusion for work within 50 feet of a railroad shall be eliminated by means of endorsement CG 24 17.

- 6.4.2 Commercial Automobile Liability Insurance: CMAR and its subcontractor(s) shall procure and maintain at their sole cost and expense commercial automobile liability insurance which shall include owned, hired and non-owned coverage with limit of liability of not less than one million dollars (\$1,000,000) combined single limit.
- 6.4.3 Workers' Compensation Insurance: CMAR and its subcontractor(s) shall procure and maintain as part of the Indirects included in the GMP, workers' compensation insurance with limits of liability of not less than one million dollars (\$1,000,000) under the Louisiana Workers' Compensation Act. The limit of liability under the Employer's Liability section (Part 2) of the workers' compensation insurance policy shall be not less than one million dollars (\$1,000,000). Whenever applicable, protection shall also be provided for under the Federal Longshoremen's and Harbor Workers' Compensation Act. Whenever applicable, protection shall also be provided for liability under the Jones Act and under general maritime law in an amount of not less than one million dollars (\$1,000,000).
- 6.4.4 Builders Risk: CMAR shall procure and maintain as part of the Indirects included in the GMP builder's risk insurance that shall protect CMAR and the subcontractor(s) and SCP against all risks (including flood and wind) from damage to the Work, including but not limited to, structures, materials, equipment, and buildings to be incorporated into the Work. The amount of such insurance shall be not less than the value of the work at completion but may contain commercially available sublimits for perils of Named Windstorm, Flood, and Earthquake. In all cases, CMAR shall remain liable to SCP. Builder's risk insurance shall provide for losses to be payable to CMAR and SCP as their interest may appear.
- 6.4.5 Marine Vessels Insurance – Where the work involves the use of marine vessels, the following insurance is required:
- 6.4.5.1 Full form Hull and Machinery equivalent to the American Institute Hull Clauses (June 2, 1977) with limits at least equal to the full value of the vessel and with navigational limits adequate for Permittee and/or its contractor(s) to perform their work and services.
 - 6.4.5.2 Full form Protection and Indemnity insurance equivalent to Form SP-23 including, but not limited to, coverage for injuries to or death of masters, mates and crews of vessels, collision liability, towers liability (where the vessel is engaged in towing operations), removal of wreck and/or debris, and contractual liability, with limits of liability not less than \$1,000,000 per accident or occurrence.
 - 6.4.5.3 Full Form Vessel Pollution Liability equivalent to the most current form of the Water Quality Insurance Syndicate including but not limited to coverage for OPA and CERCLA.
- 6.4.6 Professional Liability/Errors and Omissions Insurance: CMAR shall procure and maintain errors and omissions/professional liability insurance in the amount of one million dollars (\$1,000,000) per claim. CMAR shall maintain this coverage in full force

and effect for a period of three years after termination of this Agreement. CMAR shall furnish SCP evidence of continuation of such insurance through the end of the required three-year period. CMAR shall notify SCP in writing in the event of any cancellation of coverage.

- 6.4.7 Excess or Umbrella Insurance: The CMAR shall procure and maintain as part of the Indirects included in the GMP, an excess or umbrella policy with limits of not less than five million dollars (\$5,000,000). This policy shall provide excess coverage over all underlying policies required above.
- 6.4.8 Contractor's Pollution and Liability Insurance: CMAR shall procure and maintain as part of the Indirects included in the GMP, contractors' pollution and liability insurance with a minimum limit of five million dollars (\$5,000,000) per loss and five million dollars (\$5,000,000) aggregate for all losses within the policy year. The policy must comply with the provisions set out below. Each contractor is responsible for any environmental losses, claims, and costs of any kind which exceed CMAR's insured limits of liability, or which may be outside the coverage scope of the policy required in this subsection. The Work under this Agreement shall be scheduled as "Covered Operations" under this policy. Coverage is included on behalf of CMAR for covered claims arising out of the actions of independent contractors. If CMAR is using subcontractors, the pollution liability policy must use "By or on behalf of" language with regard to coverage. If the policy contains a warranty stating that coverage is null and void (or words to that effect) if CMAR does not comply with the most stringent regulations governing the Work, it shall be modified to include CMAR's willful or intentional non-compliance with applicable governmental regulations. The policy form must "Pay on behalf of" rather than "Indemnify" CMAR.

6.5 ST. CHARLES PARISH'S INSURANCE.

- 6.5.1 SCP may, at its option and at its expense, procure and maintain such insurance as will protect it from its contingent liability for damages for personal injury, including death, which may arise from operations under this Agreement.

SECTION 7 PAYMENT

7.1 GUARANTEED MAXIMUM PRICE, SAVINGS

- 7.1.1 SCP shall pay CMAR for CMAR's performance of this Agreement and the Work, and CMAR shall accept the Cost of Work plus Fees (Pre-Construction Services Phase Fee and Construction Phase Fee) as payment in full; provided, however, that the sum of the Cost of Work and the Construction Phase Fee shall not exceed the GMP as originally fixed or as adjusted from time to time as provided in these General Conditions.
- 7.1.2 Savings shall be calculated and paid upon Final Completion of the Work. All Savings shall be distributed with 100% allocated to SCP. Savings returned to SCP shall not

include return of Construction Phase Fee for the amount of the Savings but shall include appropriate percentage of bonds and insurance premiums and taxes attributable to the Savings amount. Allocations to GMP for Allowance and Contingency items that remain unused upon Final Completion shall be returned 100% to SCP.

7.2 SCHEDULE OF VALUES.

7.2.1 Before issuance of the GMP-Setting amendment and commencement of the Work in the Construction Phase, CMAR shall submit to SCP, and SCP and CMAR shall agree upon, a complete Schedule of Values on the items constituting the GMP following the sample outline in a format that is mutually agreed to in the Preconstruction Phase, setting forth a breakdown for the various portions of the Work to be used as a basis for payment as the Work progresses.

7.3 APPLICATIONS FOR PROGRESS PAYMENT.

CMAR shall deliver to the Construction Management Professional (or such other person as is designated by the Engineer) on the last day of each month an application for progress payment in the format specified by SCP in “in a format that is mutually agreed to in the Preconstruction Phase. A copy of the pay application shall be concurrently provided to SCP. Each such application for payment shall be based on the Schedule of Values and be in an amount determined by the percentage of completion of the Cost of Work in the month being billed. It shall show the percentage of completion of each category of the Work performed in the billing period. The payment application shall be accompanied (as separate documents) by an updated CPM Schedule and narrative schedule update report as provided for herein. In addition, CMAR shall provide the following documentation upon specific request by SCP for cost reimbursable portions of the work : a) a written accounting in a form agreed to by CMAR and the Engineer of the Cost of Work completed, b) a report by CMAR on Subcontractor buy-out status, contract sums, and Subcontractor pay applications, c) a copy of job cost ledger, d) a copy of timecards for all employees charged to the Project and e) a copy of Construction General Conditions invoices and purchase orders, each for the time periods periodically requested by the Engineer. All meal expenses included in Construction General Conditions shall be supported by a copy of the credit card receipt (if applicable) and a detailed copy of the bill, with a written list of attendees and business purpose of the meeting/meal included.

7.3.1 CMAR Construction Phase Fee shall be paid monthly in accordance with the Agreement. The amount approved and paid for progress achieved in the month billed for shall not constitute final acceptance of the Work and is subject to final adjustment at the time of final acceptance and Final Payment so as to fully comply with, and not exceed, the GMP.

7.3.2 The Construction Management Professional, within seven (7) days after receipt of CMAR application for progress payment, and no later, will either issue to SCP (a) a certificate of approval for payment of such amount as is invoiced in the payment application, or (b) specific written findings setting forth those items in detail in the estimate of the Work in the pay application that are not approved for payment under the

contract. Any items that are not specifically identified by the Construction Management Professional as not approved, with written detailed findings, shall be deemed approved.

- 7.3.3 As to any items not approved for payment, the Engineer may withhold an amount from the progress payment to pay the expenses SCP reasonably expects to incur in correcting the deficiency set forth in the written finding issued by the Construction Management Professional or the Engineer. SCP may also withhold an amount as may be necessary to protect itself from loss on account of: (a) defective work not remedied; (b) claims filed against CMAR or reasonable evidence indicating probable filing of claims; (c) failure of CMAR to make payments promptly to subcontractors or for material or labor; (d) a reasonable doubt, in SCP's discretion, that the Work can be completed for the remaining balance of the GMP; or (e) damage to another contractor. When the grounds are removed, payment shall be made for amounts withheld. In lieu of withholding, a performance bond may be provided by CMAR.

7.4 PAYMENT AND RETAINAGE.

- 7.4.1 Within thirty (30) days following the receipt of the Construction Management Professional certificate of approval for payment and the written detailed findings of items not approved, if any, SCP shall pay to CMAR the amount due on the progress payment application. However, the payment shall be limited to 95% of the approved value of the construction work in place and the value of materials suitably stored in accordance with Section 7.6.1 below of these General Conditions during the month being billed. In lieu of retainage, a retainage bond may be provided by CMAR.
- 7.4.2 Within fourteen (14) calendar days after issuance of the Certificate of Substantial Completion, SCP will issue a formal notice of Acceptance of Completed Contract prepared by SCP for CMAR to record with the Recorder of Mortgages of the Parish in which the Work has been done. Not less than forty-five (45) days after the recordation of this Acceptance of Completed Contract, CMAR shall furnish to SCP a Lien and Privilege Certificate issued by the said Recorder of Mortgages certifying that there are no outstanding claims or liens recorded against the project. Upon receipt of the Lien and Privilege Certificate, an invoice marked Final, and issuance of a Certificate of Final Completion by SCP, the entire balance due, including all retained amounts, shall be paid to CMAR as Final Payment.
- 7.4.3 On projects in which parts of the work are turned over to SCP for permanent use prior to completion of the Work as a whole, pursuant to Section 7.8, upon written request of CMAR, SCP may pay all or part of the retained amount, with respect to such portions of the work for which Certificate of Substantial Completion has been given, the amount of such payment to be determined by SCP; provided that CMAR shall submit to SCP acceptable evidence that all invoices for materials and all payments due subcontractors have been paid up to that time.

7.6 PAYMENT FOR ON-SITE AND OFF-SITE MATERIALS.

- 7.6.1 Progress Payment may be made to CMAR on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation into the Work at the discretion of the Engineer. Payment may be similarly made to CMAR for materials and equipment suitably stored off the Site, conditioned upon CMAR furnishing satisfactory evidence to the Engineer that (a) title to the materials and equipment will pass to SCP upon payment for same; (b) there are no claims of third parties; (c) the materials and equipment are adequately insured for full replacement value plus delivery; and (d) such other matters as SCP may reasonably request in order to protect its interests. Payment will typically not be made for materials or equipment expected to be stored for 30 days or less before being incorporated in the Work.

7.7 OWNERSHIP OF CONSTRUCTION WORK.

- 7.7.1 CMAR warrants that title to all Work included in an Application for Progress Payment shall pass to SCP no later than the time of payment therefore. CMAR further warrants and represents to SCP that upon submittal of an Application for Payment, all construction work for which Applications for Payment have been previously issued and payments received from SCP shall, to the best of CMAR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of CMAR, its Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

7.8 SUBSTANTIAL COMPLETION.

- 7.8.1 When CMAR believes the Work, or a portion thereof which SCP wants to accept separately and agrees to do so, is Substantially Complete, as defined in Section 1.2 above, CMAR shall notify the Engineer and the Construction Management Professional and submit to the Engineer and the Construction Management Professional a comprehensive list of items to be completed or corrected as to that portion of Work or all Work. Within five (5) business days of receipt of CMAR's notice and list, the Engineer, the Design Professional, the Construction Management Professional and CMAR will jointly make an inspection of the Project to determine whether Substantial Completion has in fact occurred. If it is determined by the Engineer that the Work, or the relevant portion thereof, is Substantially Complete, the Engineer shall issue the Punch List, with estimated cost of completion of items, and the Certificate of Substantial Completion stating the date of Substantial Completion which certificate shall be executed by SCP and CMAR. CMAR shall thereupon proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alleviate or alter the responsibility of CMAR to complete all Work in accordance with the Contract Documents.
- 7.8.2 Without in any way invalidating this Agreement, SCP shall have the right to take possession of and to use any portion of the Project at any time, as hereinafter provided. If, at any time, any portion of the permanent construction has been substantially and

satisfactorily completed in accordance with the Contract Documents, and if the Engineer and CMAR mutually determines that such portion of the permanent construction is not required for the operations of CMAR, but is needed by SCP, the Engineer shall issue to CMAR a Certificate of Beneficial Occupancy for such portion, and thereupon or at any time thereafter SCP may take over and use said portion of the permanent construction described in such certificate, and may exclude CMAR therefrom.

When all of the Work has been substantially and satisfactorily completed in accordance with the Contract Documents, the Engineer may issue to CMAR a Certificate of Substantial Completion, and thereupon or at any time thereafter SCP may take over and use the Work and may exclude CMAR therefrom. Until Final Completion, and during such further periods thereafter as any payment provided for under the Contract shall remain unpaid by SCP, the insurance coverage shall continue.

If at any time, it is determined by the Engineer that the interim use by SCP of parts of the Site is necessary as a temporary measure, SCP shall issue a written notice to CMAR stipulating this need and thereupon, or at any time thereafter, SCP may take over and use such area as described in said notice and may exclude CMAR therefrom. Such area taken over by SCP for interim use shall be returned to custody of CMAR for completion of construction upon termination of SCP's need for the area. The entire area used shall be returned to CMAR in its original condition, otherwise SCP will be fully responsible for all expense incurred in restoring said area to such original condition. CMAR shall be entitled to make a claim for adjustment to the GMP and/or Contract Time(s) as a result of this interim use.

When completed portions of permanent construction are taken over by SCP, or when parts of staging area are taken over for an interim period, then in both cases CMAR's obligation as stipulated under Section 2.5.6 shall immediately cease within the stipulated areas of SCP use, until such time as SCP returns such parts to the custody of CMAR.

The guarantee period provided in Section 2.7 for all work satisfactorily completed in areas taken over by SCP for permanent use shall begin at time of issuance by SCP to CMAR of Certificate of Substantial Completion of such areas.

CMAR's performance bond may be reduced at the time SCP issues a Certificate of Substantial Completion for a completed area of the Work. The amount of such reduction shall be equal to the Schedule of Values price of the Work covered in the Certificate, provided that the performance bond shall never be reduced to less than fifty percent (50%) of the GMP amount. If such prior use increases the cost of or delays the Work, CMAR shall be entitled to an adjustment to the GMP and/or Contract Time(s).

7.9 FINAL COMPLETION AND FINAL PAYMENT.

7.9.1 CMAR must complete all outstanding Work items noted in the Substantial Completion "Punch List" for the Work, or relevant portion thereof, and satisfy other Contract requirements as set forth in the Contract Documents in order for SCP to certify Final Completion. Requirements for this certification also include, but are not limited to,

equipment operating training for SCP and submission and approval by the Engineer of all Record and Close Out Documents.

7.9.2 Conditions Precedent to certifying Final Completion. The Certificate of Final Completion will not be issued until such time as CMAR:

- a) submits to SCP:
 - All Project warranty documents, including special manufacturers warranties;
 - Schedule of Required Maintenance;
 - Operation and Maintenance Manuals (electronic and hard copies);
 - As-Built drawings (electronic copies and hard copies);
 - Any required SCP training provided by CMAR;
 - Excess materials, tools and equipment as required by Contract Documents
 - All keys have been returned; and
 - Any other items identified by SCP, which are listed in SCP's Final Project Completion Checklist and agreed to by CMAR in Contract Documents, to be received by SCP.
- b) removes and satisfactorily disposes of all temporary structures, false work, debris, tools, equipment and materials left over and not incorporated into the Work, except those valuable surplus materials furnished by SCP and materials furnished by SCP and designated to be salvaged shall be delivered by CMAR to a designated SCP storage area. The Project Site shall always be left in a clean, well-drained condition, with the Work itself in a finished, complete and satisfactory state. Building floors, decks, paved areas and similar finished surfaces shall be left broom clean.

7.9.3 If, after Substantial Completion of the Work has been achieved, Final Completion is materially delayed through no fault of CMAR, or by the issuance of additional change orders or change directives by SCP, the Engineer may at its sole discretion, upon request of CMAR, and without terminating the Agreement, make payment to CMAR of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retainage, and if bonds have been furnished, the written consent of surety to payment for that portion of the Work fully completed shall be delivered by CMAR to SCP, and such payment shall be made under the terms and conditions governing Final Payment, except that such payment shall not constitute a waiver of claims by either CMAR or SCP.

7.9.4 Acceptance of Final Payment by CMAR shall constitute a waiver of all affirmative claims by CMAR in connection with the Agreement and performance of the Project. The making of the Final Payment by SCP shall constitute a waiver of claims by SCP, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after Final Payment; (b) latent defects which SCP becomes aware of after Final Payment; or (c) the terms of warranties required by the Contract Documents and other rights provided under Louisiana law.

7.10 ALLOWANCES.

7.10.1 CMAR shall include in the GMP all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Engineer may direct, but CMAR shall not be required to employ persons or entities against which CMAR makes reasonable objection. Unless otherwise provided in the Contract Documents:

- a) Materials and equipment under an Allowance shall be selected by the Engineer within a reasonable time frame as defined in the Engineer approved Project CPM Schedule;
- b) Allowances shall cover the cost to CMAR of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- c) Allowances shall not include professional or construction fees, Construction General Conditions, or bond or insurance premiums, but may include the cost of deductibles;
- d) Allowances shall cover CMAR's costs for unloading and handling at the Site, labor, installation costs and other expenses;
- e) Whenever costs are more than or less than Allowances, the GMP may be adjusted accordingly by amendment or change order in accordance with provisions of Section 10. The amount of the amendment or change order shall reflect the difference between actual costs and the Allowances plus Construction Phase Fee on such difference in accordance with Section 10 hereof if the actual costs are greater than the Allowances.

7.11 CONTINGENCIES.

7.11.1 CMAR and SCP acknowledge that the GMP contains a line item for a "Contractor Contingency". On a monthly basis, after finalization (i.e., "buyout" or subcontractor contract issuance) of a line item, the Schedule of Values will be adjusted by CMAR to reflect the actual amount. Contingencies shall not be carried in line-item amounts after finalization of a line item. The Contractor Contingency, upon approval of the Engineer, shall be for CMAR's use and shall be increased by amounts not expended on other line-item bid packages and shall decrease by additional amounts required to be expended on other line item bid packages. Following completion of all contract execution by Subcontractors (Project finalization), Contractor Contingency shall become Contractor Contingency and CMAR may use this Contractor Contingency for legitimate unforeseen construction expenses, subject to the Engineer's review or approval, at the Engineer's discretion.

CMAR shall submit detailed monthly reports to SCP indicating how the Contractor Contingency was used in the reporting period, and the status of the Contractor Contingency. The Engineer has the authority to reject any use of the Contractor Contingency after it has been submitted if the Engineer reasonably believes that some or all of the amount included in the use of the Contractor Contingency is not a legitimate expense for the Project. Upon the Engineer's rejection of a Contractor Contingency use,

CMAR will thereupon credit the rejected Contractor Contingency amount back to the Construction Contingency in the next subsequent payment request. Any amounts remaining in “Contractor Contingency at Final Completion shall be deemed Savings and will be allocated to SCP as such. Should the “Bidding Contingency or Construction Contingency” be exhausted prior to award of all the bid packages, any subsequent overruns in bid package costs or construction costs shall be CMAR’s sole responsibility, with no additional compensation due thereon from SCP.

7.11.3 Upon award of each bid package, the difference between CMAR’s estimated Cost of the Work contained within the bid package, exclusive of contingency, versus the actual award cost thereof as determined by the bidding and award of the package shall be promptly calculated. If the award cost exceeds CMAR’s estimated cost in the GMP, any necessary portion of the Bidding Contingency shall be applied, subject to the Engineer’s approval, to cover any overrun, and any underrun amount shall be used to increase the Bidding Contingency.

7.11.4 CMAR will include an explicit requirement in contracts with Subcontractors that change orders between CMAR and the Subcontractors will be priced consistent with the requirement of Section 10 of these General Conditions with adequate itemized change order pricing regardless of whether or not there is a comparable change order between CMAR and SCP. In addition, CMAR shall retain, and make available to the Engineer upon request, all bid documents including requests for proposals, requests for quotes, and bid responses from both successful and unsuccessful bidding Subcontractors.

7.12 RENTAL EQUIPMENT.

7.12.1 For cost reimbursable items of work, rental equipment shall include rental charges for machinery, equipment, and hand tools not customarily owned by construction workers that are provided by CMAR at the site, whether rented from CMAR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates, quantities of equipment rented, and duration of use shall be subject to the Engineer’s prior approval.

7.12.3 For cost reimbursable items of work, 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 Site. 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 CMAR.

7.12.4 For cost reimbursable items of work, the reimbursable equipment rental rates shall not exceed one hundred percent (100%) of the published rates in a mutually agreed publication, such as R.S. Means unless otherwise approved by the Engineer. If the publication does not contain information related to the type of equipment rented, CMAR will be allowed to use a maximum equipment rental rate equal to one hundred percent (100%) of the current competitive rental rates from local third-party equipment rental

companies. The Engineer may agree to rely solely on current competitive rental rates from local third-party equipment rental companies.

- 7.12.5 For cost reimbursable items of work, the aggregate rentals chargeable for each piece of CMAR-owned tools or equipment shall not exceed fifty percent (50%) of the fair market value of such equipment at the time of its commitment to the Work without prior written notification to the Engineer including the original purchase price, date of purchase of the equipment, and copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply 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. When the aggregate rental charge for each piece of CMAR-owned tools or equipment matches the fair market value of said equipment, said equipment may become “job owned” but only if the new value of such equipment exceeds \$5,000.
- 7.12.6 For cost reimbursable items of work, fair market value for used material and equipment as referred to in this Agreement 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.
- 7.12.7 For cost reimbursable items of work, rental charges for equipment, except for equipment owned by CMAR or any of its affiliates, subsidiaries, or other related parties, and which is rented from third parties for use in proper completion of the Work shall be considered reimbursable, and will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to SCP as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
- 7.12.8 For cost reimbursable items of work, CMAR 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 either electronically or hard copy (at the Engineer’s election) to the Engineer 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 fair market value at the time the piece of equipment was first used on the job, and (4) final disposition.
- 7.12.9 The equipment rates for CMAR owned equipment used by the CMAR to prepare estimates shall not exceed published rates in a mutually agreed (with the Engineer and SCP) publication. If the publication does not contain information related to the type of equipment to be used, CMAR will be allowed to use a maximum equipment rental rate equal to one hundred percent (100%) of the current competitive rental rates from local third-party equipment rental companies. The Engineer may agree to rely solely on

current competitive rental rates from local third-party equipment rental companies. The nature of this project may require the use of specialty equipment for which there is no published rate in the mutually agreed to source nor is comparable equipment available from local third-party rental equipment companies. In such cases CMAR will develop rates based on a market analysis, approved by the Engineering and SCP, of specialty equipment.

- 7.12.10 For outside rented equipment (equipment not owned by the CMAR), which are rented from third parties and will be used by the CMAR to prepare estimates for self-performed work shall be quoted from a rental equipment dealer. These rates to be used in the estimates will include rental, operating, maintenance, and repair costs.

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

SECTION 8 INDEMNIFICATION

8.1 PROPRIETARY RIGHTS, PATENT AND COPYRIGHT INFRINGEMENT.

- 8.1.1 Unless otherwise specified, CMAR shall pay all royalties and license fees on applicable material, equipment, techniques, etc. CMAR shall defend any action or proceeding brought against SCP based on any assertion or claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any third-party proprietary rights, trademark, patent or copyright, now or hereafter issued (“Proprietary Rights”). SCP agrees to give prompt notice in writing to CMAR of any such action or proceeding and to provide authority, information and assistance in the defense of same. CMAR shall defend, indemnify and hold harmless SCP from and against all damages and costs, including attorney’s fees, awarded against SCP or CMAR in any such action or proceeding. CMAR further agrees to keep SCP informed of all developments in the defense of such actions or proceedings.
- 8.1.2 In the event that SCP is enjoined from the operations or use of the Work, or any part thereof in connection with any claim of infringed Proprietary Rights, CMAR shall at its sole expense take reasonable steps to procure the right or license to operate or use the Work. If CMAR cannot so procure the aforesaid right within a reasonable time, CMAR shall then, promptly, at CMAR’s option and at CMAR’s expense and in consultation with SCP, (a) modify the Work so to avoid infringement of any Proprietary Rights; or (b) replace said Work with Work that does not infringe or violate any such Proprietary Rights.

- 8.1.3 Sections 8.1.1 and 8.1.2 above shall not be applicable to any action or proceeding based on infringement or violation of a Proprietary Right (a) relating solely to a particular process or the product of a particular manufacturer specified by SCP and such processes or products are something other than that which has been offered or recommended by CMAR to SCP; or (b) arising from modifications to the Work by SCP or its agents after acceptance of the Work.
- 8.1.4 In addition to the other obligations of CMAR under this Section 8.1, CMAR will be responsible for delays and for increases in the cost of the work associated with or arising out of any claim of infringed Property Rights.

8.2 GENERAL INDEMNITY.

- 8.2.1 CMAR shall protect, defend, indemnify, and keep, save, and hold harmless SCP from any and all losses, costs, claims, damages, demands, attorney's fees, expenses, penalties, fines, suits and actions of any kind and nature arising out of any accident or any occurrence, negligent or otherwise, including environmental liability, causing injury including death to any person or persons or damage to property, which is directly or indirectly caused by, resulting from, or growing out of the performance of his obligations under this Agreement, whether caused by his affiliates, his subsidiaries or his employees, servants, agents, representatives or subcontractors, including such as may be imposed for the violation of any law, ordinance, or regulation (federal, state or local); and CMAR shall defend and indemnify SCP from and against any and all costs and expenses in connection with the foregoing, including court costs, related litigation expenses, and reasonable attorney's fees that may be incurred by SCP, provided however, that nothing herein shall be construed as indemnifying SCP against its own negligence or that of its officers, agents, servants, or employees when such negligence (as determined by final judgment of a court of competent jurisdiction) is the direct cause of such loss, damage, injury or death and when there is no negligence on CMAR's part which is a contributing cause of such loss, damage, injury or death.

CMAR hereby acknowledges that the duty to defend is a separate and distinct obligation herein and, on the filing of any action, claim, suit or proceeding of any nature or kind against SCP, shall defend SCP from and against any and all of the foregoing actions, claims, or suits of whatever nature or kind, directly or indirectly caused by, resulting from, or growing out of CMAR's performance of its obligations under this Agreement, whether or not there is insurance coverage for the actions, claims or suits. When, in the course of fulfilling its obligations under this section, CMAR must engage attorneys to defend SCP, CMAR shall obtain the prior written consent of SCP to the attorneys to be engaged. Furthermore, CMAR shall be liable for attorney's fees and costs incurred by SCP if it must file suit or retain counsel to enforce the terms of this indemnity. SCP shall notify CMAR of any claim, demand, suit or other action brought or raised against SCP for which CMAR may be liable as stated above. The provisions of this indemnity shall survive this Agreement and are intended to be severable. If any term or provision should be determined invalid or unenforceable for any reason, that invalidity or

unenforceability shall not affect the validity or enforceability of the remainder of the terms of this indemnity.

SECTION 9 TIME AND DELAY

- 9.1 CMAR and SCP both recognize and acknowledge that any time limits set forth in the Contract Documents for performance are of the essence of this Agreement. CMAR agrees that it will commence performance of the Work, achieve Substantial and Final Completion of the Work, and achieve any interim milestones for Substantial and Final Completion, in compliance with all contractual time requirements.
- 9.2 Time is of the essence of each and every part of the Contract Documents and of the Agreement wherein a definite and certain length of time is fixed for the performance of any act or activity whatsoever. Where, under the Contract Documents additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall also be of the essence of this Agreement.
- 9.3 Failure of CMAR to achieve the completion dates for Substantial or Final Completion set forth in the Agreement will result in the assessment of Ascertained and Liquidated Damages as provided in the Agreement. The per diem amount for Ascertained and Liquidated Damages provided for in the Agreement shall be paid for each and every calendar day that CMAR is not in full compliance with the time(s) stipulated in the Agreement for completing the Work. The Ascertained and Liquidated Damages per diem amount is fixed and agreed upon by and between CMAR and SCP because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages SCP would in such event sustain. Any such sums may be withheld by SCP from Final Payment due hereunder or from retainage.
- 9.4 If CMAR is delayed in the performance of the Work, and such delay actually and directly delays a timely achievement of a critical path activity, element or component, based upon an analysis of the current CPM Schedule, due to acts, omissions, conditions, events or circumstances beyond CMAR's control or prevention and due to no legal fault of his own or of those for whom CMAR is responsible under the terms of the Contract Documents, the time for Substantial Completion of the Work, and to the extent applicable, any interim milestones or Substantial Completion dates for portions of the Work, shall be extended by written amendment or change order for the amount of time attributable to such events or circumstances. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle CMAR to an extension of the Contract Time(s), include acts or omissions of SCP, or anyone under SCP's control, including separate contractors hired by SCP, unforeseeable Project Site conditions, labor disputes, unusual and extreme delay in transportation, and Force Majeure such as, but not limited to, acts of God, earthquakes, hurricanes, nation-wide or regional strikes or labor disputes, fires, prolonged extreme and extraordinarily severe weather (but not reasonably foreseeable weather conditions including high or low ambient temperatures and season rain), riots, wars, floods or acts of terrorism. CMAR shall use commercially reasonable efforts to remedy the effects of the delay with all due diligence. Neither economic impracticality nor the inability of CMAR to perform in whole or part for economic reasons shall be considered as

justification for delay under this section. CMAR's sole remedy for the occurrence of Force Majeure events shall be an extension of Contract Time for the activities on the schedule that are directly delayed by the Force Majeure event.

- 9.5 CMAR shall include weather-related delays, as indicated in the below table, within the CPM Schedule which SCP approves. If the Project experiences weather-related delays beyond the contractually specified number of weather days, CMAR shall be entitled to a commensurate extension of time per Section 9.4, upon approval by SCP. Weather related days are defined as days when weather conditions have an adverse effect on the critical path activities of the construction schedule. CMAR shall demonstrate to SCP how the weather conditions are preventing critical path activities from being performed that day.

Month	Ordinarily Expected Weather Days
January	4 Work Days
February	4 Work Days
March	4 Work Days
April	2 Work Days
May	2 Work Days
June	2 Work Days
July	2 Work Days
August	2 Work Days
September	0 Work Days
October	0 Work Days
November	2 Work Days
December	2 Work Days

- 9.6 Contract Time(s) may also be adjusted for river stages which, in the opinion of SCP, render work that is critical to the schedule unfeasible through reasonable construction methods; or for river stages which cause a restriction mandated by a permitting agency, delaying the work on the critical path per Section 9.4. In consideration of whether a river stage is just cause for an adjustment in Contract Time(s), SCP will take into account CMAR's work sequence and whether low river periods during the Contract Time were appropriately taken advantage of. It is imperative that CMAR schedule critical work sensitive to river stage during low water seasons and adjust and optimize his schedule to conform with actual river stages and short-term predictions.
- 9.7 CMAR shall be entitled to all appropriate adjustments of all applicable components of the GMP only for mutually determined delays to the CPM Schedule directly caused by the actions, omissions or inactions of SCP and upon proof of the actual, direct additional cost to CMAR for such delays.
- 9.8 Notice of any delay in performance of the Work as describe in Sections 9.4 must be made by CMAR in writing to the Construction Management Professional and the Engineer immediately but in no event later than seven (7) calendar days after discovery of the event giving rise to the

delay. CMAR shall then provide additional details concerning the delay in writing to the Construction Management Professional and the Engineer within fourteen (14) calendar days from the delay notice. Failure to satisfy each of these time requirements shall absolutely bar any and all delay claims associated with the event. The detailed notice shall identify the cause of the delay, the anticipated length of the delay in reasonable detail, the probable effect of such delay upon the progress and Cost of the Work, and possible mitigation plans. If the cause of the delay is ongoing, CMAR must give further detailed notice every month at the same time it submits the updated Project Status Report.

- 9.9 Within fifteen (15) calendar days after the elimination of cause of such delay, CMAR shall, unless the time is extended by an appropriate change order or amendment signed by SCP, submit further documentation concerning the delay and, if appropriate, a formal written request for an extension of time for such delay and any compensation sought for the delay. The written request for time extension shall state the cause of the delay, the number of days of extension requested and the compensation sought and provide a fully documented analysis of the critical path schedule, including a “fragnet” and any other data demonstrating a delay in the critical path of the Work or individual milestone or the overall Project completion. If CMAR does not timely comply with the notice and documentation requirements set forth in this Section 9.8, CMAR’s claim for delay will be barred.

SECTION 10

CHANGES TO THE CONTRACT SCOPE, PRICE, TIME AND TERMS

- 10.1 CHANGES. SCP shall have the right, at any time, to make any alterations within the scope of the Project, but subject to adjustments in the GMP or Contract Time or both in accordance with this Section 10, to the extent such alterations to the scope increase either the Contract Time or Cost of Work. In no event shall the GMP or Contract Time be adjusted for conditions identified by CMAR through its investigations or survey of existing conditions prior to submission and establishment of the GMP and Schedule.
- 10.1.1 After the Agreement is signed, modifications to the Agreement, including any changes to GMP, the Contract Time(s), Scope of Work, or terms and conditions of the Agreement may only be made by a written amendment or change order executed by the Parties, except as provided for in Section 10.2. Terms of payment for Work on any authorized change will be the same as for Work stipulated in Agreement.
- 10.1.2 CMAR shall not proceed with the Work on any change involving an increase or decrease in cost or time without receiving prior written authorization from SCP, and CMAR must proceed in accordance with the procedures set forth in this Section 10. No verbal order or suggestion given by SCP shall be construed as authorizing or being the basis of any claim on the part of CMAR for extra compensation, either for extra work, materials, or equipment, or for damages because of CMAR’s compliance therewith. SCP’s right to make changes in the Work shall not invalidate this Agreement, relieve CMAR of any responsibility or require SCP give notice to the surety. Any other requirement of notice to the surety of a change in the Work shall be the sole responsibility of CMAR. If CMAR proceeds with any change involving an increase or decrease in cost or time without

written authorization from SCP as required by this paragraph, CMAR hereby waives all rights or claims CMAR may have in connection with or as a result of the change.

10.1.3 An amendment or change order is a written instrument issued after execution of the Agreement, signed by SCP and CMAR, stating their agreement upon the following, as applicable:

- a) The scope of the change in the Work;
- b) The amount of the adjustment, if any, to the GMP;
- c) The extent of the adjustment, if any, to the Contract Time(s) for performance set forth in the Contract Documents; and
- d) Changes to the terms and conditions of the Agreement.

10.1.4 All changes in the Work authorized by an amendment or change order shall be performed under the applicable terms of the Contract Documents, and SCP and CMAR shall negotiate in good faith and as expeditiously as possible on the appropriate adjustments, if any, in Contract Time or GMP.

10.1.5 Neither CMAR nor Surety shall be released from the whole or any part of the obligations herein assumed by reason of any change in the amount, nature, scope, character or extent of the work, or in any Contract Documents, or in the mode or time of payment, or by any extension of time or indulgence granted to CMAR, even though any or all of said acts be without the knowledge and consent of CMAR or Surety, unless such release be expressly made in writing by SCP.

10.2 CHANGE DIRECTIVES.

10.2.1 A “Change Directive” is a written order prepared by the Design Professional and signed by SCP, directing a change in the Work at a point in time prior to agreement on an adjustment in GMP or the Contract Time(s) of performance or both. By issuance of a written Change Directive, SCP, at any time, may make any such changes within the general scope of the Agreement or issue additional instructions, require additional or modified Work, or direct deletion of Work. Upon receipt of a change directive, CMAR shall promptly proceed with the change in the Work and promptly advise SCP of CMAR’s agreement or disagreement with the proposed method of adjustment for GMP or the Contract Time or both.

10.2.2 SCP and CMAR shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments resulting from the Change Directive, and agreement reached shall be effective immediately and memorialized by preparation and execution of an appropriate amendment or change order. If the Parties fail to reach an agreement, CMAR shall be entitled to proceed in accordance with Section 11 of this Agreement.

10.3 MINOR CHANGES IN THE WORK.

10.3.1 The Construction Management Professional may make minor changes in the Work consistent with the intent of the Contract Documents providing such changes do not involve an adjustment in the Cost of Work or the schedule and do not materially affect or alter the design, quality, or performance. The Construction Management Professional shall promptly inform the Engineer and the Design Professional, in writing, of any such changes, and verify that CMAR has recorded such changes on the As-Built Documents.

10.4 PRICE, TIME, OR SCOPE OF WORK ADJUSTMENT.

10.4.1 The cost of or credit to SCP resulting from a change order, amendment, or Change Directive shall be determined in one or more of the following ways:

- a) By unit prices stated in the Contract Documents; that will be applied to additional or reduced quantities due to the change.
- b) As a cost reimbursable item, as defined below, properly itemized and supported by sufficient data. Such costs shall be itemized in the Schedule of Values, submitted in a format mutually agreed to by the CMAR and SCP, and limited to items directly allocable to the change in the Work.
 - 1) Direct Construction Costs as defined by section 1.2.19 as it relates to the changed or additional work.
 - 2) The actual costs to the CMAR of any additional Indirect Costs that are a result of the changed or additional work will be included.
 - 3) Additional Construction General Conditions required to support the work.
 - 4) Construction Phase Fee will be added on Pro Rata basis as a percentage of the sum of the other four cost categories with respect to the GMP.
- c) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate audit; provided that such lump sum shall not exceed that amount calculated under (b) above. This pricing will use same procedures in Section 2.2.4.7 of this document for CMAR self-performed work and or section 2.2.4.6 if a subcontractor will perform part or all of the scope of the forward priced change or additional work.

10.4.2 Any dispute regarding the pricing methodology or cost of a change shall not relieve CMAR of the obligation to proceed with work on the change directed by the Engineer. The cost or credit to SCP shall be promptly determined by the Engineer in accordance with this Agreement.

10.4.3 A SCP-approved written amendment or change order, once fully executed by SCP and CMAR shall be full and final settlement of all entitlement claims for direct, indirect, delay, disruption, inefficiency, productivity and any other consequential costs related to items covered or affected, as well as for related delays. Any such claim not presented

by CMAR for inclusion in the amendment or change order prior to signature is irrevocably waived.

10.4.4 In the event of any disagreement between SCP and CMAR regarding: i) whether CMAR is entitled to payment as a result of any amendment, change order or change directive; ii) the amount of compensation in the event of any other disagreements over the Scope of Work or proposed changes to the Work, or iii) an extension of time for completion of the Work, SCP and CMAR agree to resolve all such disagreements consistent initially with Section 10 of these General Conditions and thereafter if not resolved, in accordance with Section 11. As part of the negotiation process, CMAR shall furnish the Engineer and the Construction Management Professional with a good faith estimate of the costs to perform the disputed services or work in accordance with SCP's interpretations. If the Parties are unable to agree, and SCP expects CMAR to promptly perform the services in accordance with the Engineer's or the Construction Management Professional's interpretations of the documents, CMAR shall proceed to perform the disputed services, conditioned upon SCP issuing a written Change Directive to CMAR directing CMAR to proceed and specifying the Engineer's or the Construction Management Professional's interpretation of the services that are to be performed.

10.4.5 The requirements set forth above as to CMAR providing detailed, itemized pricing on Subcontractor change orders is fully applicable to change orders from CMAR to Subcontractor where there are no comparable amendments or change orders between SCP and CMAR.

10.5 CLAIMS BY CMAR FOR ADJUSTMENT.

10.5.1 Should CMAR be of opinion, at any time, that an adjustment to GMP or Contract Time or both is due him for work or materials not clearly covered in this Agreement or not previously ordered by SCP as extra work, CMAR shall notify the Engineer in writing of his intention to make a claim for such adjustment before beginning the work on which is the basis of the claim. If such notification is not given and SCP is not afforded the opportunity to address with a Change Order or Change Directive in accordance with this section prior to CMAR incurring additional costs, CMAR shall automatically forfeit his right to an adjustment to GMP or Contract Time or both.

10.5.2 Except as provided for in Section 10.5.1, should CMAR be of opinion, at any time, that he has sustained damage or has incurred additional costs, for which he may be due an adjustment to GMP or Contract Time or both under this Agreement, he shall, within fourteen (14) calendar days after sustaining, or after ascertaining the probable existence of, such damage, make written notification to the Engineer of the nature of damage claimed. The Engineer shall thereupon render a decision in the matter.

10.6 EMERGENCIES.

- 10.6.1 In any emergency affecting the immediate safety of persons or property, CMAR shall promptly act, at its discretion, to prevent or minimize threatened damage, injury or loss. Any increase in the GMP or Contract Time(s) of performance or both claimed by CMAR on account of emergency work shall be determined as provided in Section 10.4.

SECTION 11 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

11.1 DISPUTE AVOIDANCE AND RESOLUTION.

- 11.1.1 The Parties are fully committed to interacting and working with each other through the course of the Project and agree to communicate regularly with each other at all times, including attending on-site design and construction status meetings, so as to avoid, eliminate, or minimize any disputes, disagreements, claims, or controversies relating to the Project (hereinafter “Disputes”). To the extent Disputes occur or arise during the course of the Project that are not otherwise resolved by applicable portions of this Agreement, both CMAR and SCP agree to timely resolve such Disputes in an amicable, professional, and expeditious manner at the lowest possible level so as to avoid unnecessary costs, delays, and disruptions to the Work. To this end, CMAR Representative shall refer the Dispute to SCP’s Representative by written notice of same, not more than seven (7) calendar days from the occurrence of the event which gives rise to the Dispute, or not more than seven (7) calendar days from the date that CMAR knew or should have known of the matter; provided however, a request for adjustment based on time or delay must proceed in accordance with the provisions of Section 9, and a request for adjustment to Contract Price or Contract Time must proceed in accordance with the provisions of Section 10.
- 11.1.2 If the Representatives are unable to resolve a Dispute pursuant to Section 11.1.1, the Representatives will promptly provide notice to CMAR’s and SCP’s Senior Representatives of such failure. CMAR’s Senior Representative and SCP’s Senior Representative shall meet within 72 hours of such notice and shall attempt to resolve the Dispute. The Parties agree that, prior to any meetings between the Senior Representatives, they will timely exchange with each other all relevant documents and information that will assist the Senior Representatives in resolving the Dispute. The Senior Representatives shall have fourteen (14) calendar days from the time they first met to resolve the Dispute. If the Senior Representatives, after meeting in good faith, determine that the Dispute cannot be resolved by them on terms satisfactory to both Parties, the Parties agree that the sole remedy for CMAR to pursue the Dispute is to submit the Dispute to SCP and request an Administrative Hearing per Section 11.2.

11.1.3 The Parties understand and agree that the processes set forth in Section 11.1 and 11.2 provide the sole and exclusive remedy to resolve a Dispute. The Parties further understand and agree that providing notice of the Dispute to the other party in accordance with Sections 11.1.1 and 11.1.2 is integral and essential to the Parties' ability to perform their obligations under this Agreement.

11.2 ADMINISTRATIVE HEARING PROCESS.

11.2.1 Within thirty (30) calendar days of a request for Administrative Hearing by CMAR, SCP's President/CEO shall afford opportunity to CMAR to appear before it or before any committee or any executive designed by him/her, for the purpose of a hearing on the Dispute previously submitted in writing. The decision of SCP following the Administrative Hearing shall be final and conclusive, subject however to CMAR's option to appeal any adverse decision to a court of competent jurisdiction as provided by applicable law. Any such decision of SCP, any work product produced in connection therewith, and all proceedings pursuant to Section 11 shall be considered for settlement purposes only.

11.2.2 Unless otherwise agreed in writing, CMAR shall carry on the Work and maintain its progress during the course of any unresolved Dispute, and SCP shall continue to make payments as they fall due to CMAR in accordance with the Contract Documents.

11.3 CONSEQUENTIAL DAMAGES. Except as otherwise provided for herein, neither SCP nor CMAR shall be liable to the other for any consequential losses or damages arising out of breach of contract, including but not limited to loss of profits.

11.4 DECISIONS OF DESIGN PROFESSIONAL, CONSTRUCTION MANAGEMENT PROFESSIONAL OR ST. CHARLES PARISH. Any failure of the Design Professional, the Construction Management Professional, or SCP to make a decision within the time limits set forth herein shall not be construed as an agreement to all or any part of CMAR's claim for relief.

11.5 DISPUTES ARISING AFTER PROJECT COMPLETION. Claims involving defective design or construction work discovered after Final Completion shall be resolved in accordance with this Section, as applicable.

SECTION 12 STOP WORK AND TERMINATION

12.1 ST. CHARLES PARISH'S RIGHT TO STOP WORK OR TERMINATE FOR CONVENIENCE.

12.1.1 The Engineer at any time may, without cause and for its convenience, order CMAR in writing to stop or suspend its Work, for a period not to exceed ninety (90) calendar days. CMAR may seek an adjustment of the GMP or Time(s) of performance or both under Section 9 and 10 of the General Conditions to the extent that its work has been adversely

impacted by any such suspension or stoppage of work by SCP, unless actions, omissions or inactions of CMAR are the cause of SCP stopping or suspending the Work. The Work shall be resumed by CMAR within ten (10) calendar days after the date fixed to resume Work in the said written notice, or in a supplementary written notice, from the Engineer to CMAR.

- 12.1.2 Upon seven (7) calendar day's written notice to CMAR, SCP may, without cause and without prejudice to any other right or remedy of SCP, elect to terminate the Agreement, in whole or in part, for convenience of SCP. In such case CMAR shall be paid (without duplication of any items): a) for completed and accepted Work performed in accordance with Contract Documents prior to the effective date of the termination, including fair and reasonable sums for overhead and profit on such Work; b) for expenses incurred prior to termination in performing services and furnishing labor, materials and equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and c) for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others.
- 12.1.3 Upon receiving a Notice of Termination for Convenience, CMAR shall proceed as follows: a) stop work as specified in the Notice, b) award no further subcontracts, c) place no further orders for materials or services, d) terminate all subcontracts to the extent they relate to the Work terminated, e) assign to SCP all rights of CMAR under terminated subcontracts, in which case SCP shall have the right to settle or to pay any termination settlement proposal arising out of these terminations, f) complete whatever portion of the work in progress as not have been terminated, and f) submit complete termination inventory schedules to SCP no later than ninety (90) calendar days from date of the Notice of Termination.

12.2 ST. CHARLES PARISH'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE.

- 12.2.1 If CMAR persistently or repeatedly fails to (a) provide a sufficient number of skilled workers or the materials required by the Contract Documents; (b) comply with applicable Legal Requirements; (c) pay, without cause, its Subcontractors or suppliers; (d) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Time(s) as may be from time to time adjusted; or (e) otherwise perform the Work and its obligations in compliance with the Contract Documents or if CMAR (a) should become insolvent; (b) be adjudged bankrupt; (c) should make a general assignment for the benefit of his creditors; (d) being a corporation, should have a receiver appointed for CMAR; or (e) should cease operations under this Agreement for more than ten (10) calendar days, SCP shall, in addition to any other rights and remedies provided in this Agreement or by law, have the right to perform or terminate as set forth herein. SCP shall provide written notice of default to CMAR and his Surety and, if CMAR fails to cure the default within seven (7) days of such written notice, SCP shall have the right to (i) perform and furnish through itself or through others it selects any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to CMAR under the Contract

Documents; or (ii) terminate the Agreement with CMAR for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all job-owned materials, equipment scaffolds, tools, appliances, and other items thereon, all of which CMAR hereby transfers, assigns and sets over to SCP for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. Upon exercising its right to Terminate for Cause for any reason set forth above, SCP, at its discretion, may also exercise the right to have each or any of CMAR's Subcontractor and supply agreements assigned to SCP, or SCP's nominee, provided however, SCP should have no responsibility or liability for acts or omission of CMAR under such Agreements and the sole recourse of Subcontractors for events occurring before termination of this Agreement shall be against CMAR.

- 12.2.2 In the event of such Termination for Cause, CMAR shall not be entitled to recover any further payment until the Work is completed and shall then only be entitled to be paid for all Work performed prior to its date of default minus costs incurred by SCP to complete the Project, as set forth below, to the extent those costs exceed the GMP. In the event SCP's cost and expense of completing CMAR's Work shall exceed the GMP, then CMAR or its surety shall promptly pay the difference to SCP. Such costs and expense shall include not only the cost of completing the Work to the satisfaction of the Engineer and of performing and furnishing all labor, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expenses, including consultant and attorney's fees and expenses incurred in connection with the re-procurement and defending claims arising from or related to CMAR's default.
- 12.2.3 CMAR agrees that in the event that SCP terminates the Agreement for cause and such termination is ultimately determined to be improper or wrongful, the sole and exclusive remedy shall be that the Termination for Cause will be automatically and retroactively converted to a Termination for Convenience and the provisions of Section 12.1 of these General Conditions shall apply.
- 12.2.4 The Parties agree that if CMAR institutes or has instituted against it a proceeding under the United States Bankruptcy Code, such event may impair or frustrate CMAR's performance of its obligations under the Contract Documents. Accordingly, if such event of default occurs, SCP shall be entitled to request CMAR, its trustee or other successor, to provide adequate assurance of future performance and CMAR agrees to comply with such request. If CMAR fails to comply with such request within ten (10) days after receiving notice of the request, or if SCP is not satisfied with CMAR's response, SCP, in addition to any other rights and remedies provided by the Contract Documents, or by law, shall be entitled to terminate the Agreement as a Termination for Cause described in Sections 12.2.1 and 12.2.2 above and shall be entitled to pursue the remedies set forth in those Sections.

12.3 CMAR'S RIGHT TO STOP WORK AND TERMINATE FOR CAUSE.

12.3.1 CMAR may, in addition to any other rights afforded it under the Contract Documents or by applicable law, either stop working on the Project or terminate the Agreement for cause upon SCP's failure to pay within sixty (60) calendar days an amount in excess of \$100,000 dollars properly due to CMAR under any CMAR Application for Payment. In this regard, CMAR shall provide SCP with written notice indicating that such non-payment condition has occurred, and that it is CMAR's intention to only stop working on the Project or terminate the Agreement if the non-payment condition is not cured within seven (7) calendar days from SCP's receipt of CMAR's notice. In the event that CMAR elects to only stop working on the Project, it may nonetheless later indicate its intention to terminate the Agreement by providing SCP with written notice that CMAR will terminate the Agreement within seven (7) calendar days from receipt of CMAR's notice, unless the alleged cause of termination is cured in the interim.

12.3.2 In the event CMAR properly and lawfully elects to stop working on the Project under Section 12.3.1 for non-payment and then resumes work, CMAR shall be entitled to make a claim for adjustment to the GMP and Contract Time(s) of performance to the extent CMAR has been adversely impacted by the stoppage of work on the Project. In the event that CMAR elects to terminate the Agreement on the basis permitted under section 12.3.1, CMAR shall be entitled to recover the same costs it would be permitted to recover had SCP terminated this Agreement for its convenience under Section 12.1 of these General Conditions.

12.3.3 If the work on the Project, or any part thereof, shall be stopped under Section 12.1.1, and if SCP does not give notice in writing to CMAR to resume working on the Project at a date within ninety (90) calendar days of the date fixed in written notice to stop work or by order of any court or public authority, then CMAR may abandon that portion of the Work so stopped, provided that CMAR shall have given SCP thirty (30) calendar days written notice of such intent prior to the termination of the said ninety (90) calendar day period, unless such stop work had been ordered to secure compliance with the terms of this Agreement. CMAR will be entitled to the estimates and payments, if any be due, as determined by the Engineer, for all completed portions of the Work so abandoned.

12.4 SUBCONTRACTORS AND SUPPLIERS. If the Agreement is terminated for any of the reasons set forth above, (a) CMAR's agreements with its Subcontractors and suppliers, at SCP's option and without further action by CMAR, shall be assigned to SCP; provided however, that SCP shall have no liability for any pre-existing acts or omissions or default by CMAR under such agreements and the sole recourse of such Subcontractors and suppliers for any such events shall be against CMAR; and (b) CMAR, if notified to do so by the Engineer, shall promptly remove any part or all of his equipment and supplies from the property of SCP and failure to make such removal shall entitle SCP to remove all such equipment and supplies at the expense of CMAR.

SECTION 13
MISCELLANEOUS

- 13.1 ASSIGNMENT PROHIBITED. CMAR shall not assign this Agreement or subcontract it as a whole. The practice wherein CMAR furnishes a performance bond to SCP for the benefit of another organization which will actually perform the Work is deemed to be an assignment of this Agreement prohibited by this Section.
- 13.2 SUCCESSORSHIP. The provisions of these General Conditions and the other Contract Documents shall be binding upon the Parties, their employees, agents, heirs, successors and assigns.
- 13.3 HEADINGS. The headings used in these General Conditions or used in any other Contract Document are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 13.4 NOTICE. Whenever the Contract Documents require that notice be provided to the other Party, notice will be deemed to have been validly given (a) if delivered in person to the individual intended to receive such notice; or (b) if delivered or sent by registered or certified mail, postage prepaid, or by commercially recognized overnight courier, to the address indicated in the Agreement. In addition, any all notices to be given by SCP to CMAR under this Agreement shall be deemed served if delivered in person to superintendent, or in their absence, to a foreman, at or near the Site.
- 13.5 EMPLOYMENT. During the period of performance of this Agreement, neither party shall employ or hire any employees of the other party without the other party's consent.
- 13.6 MODIFICATION OF AGREEMENT. The Contract Documents may not be changed, altered, or modified in any way except in writing (by amendment or change order per Section 2.1.10) and signed by a duly authorized representative of both Parties.
- 13.7 CONSEQUENTIAL DAMAGES. Under no circumstances shall either Party or their related parties be liable to the other for incidental, consequential or punitive damages, including but not limited to, loss of profits, loss of business opportunity, cost of capital, or loss of goodwill.
- 13.8 GOVERNING LAW, VENUE, AND WAIVER OF JURY. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana, without giving effect to any conflict of law provisions. Venue of any action based upon or arising out of this Agreement shall be exclusively in the 29th Judicial District Court, Parish of St. Charles, State of Louisiana or the United States District Court for the Eastern District of Louisiana, as appropriate. The Parties irrevocably waive any objection which they may have now or hereafter to (a) the personal jurisdiction of said courts, (b) the venue of any proceeding brought in such court, or (c) that such proceedings have been brought in a non-convenient forum when brought in such court. Additionally, the parties irrevocably agree that any final judgment (after appeal

or expiration of time for appeal) entered by such court shall be conclusive and binding upon the parties and may be enforced in the courts of any other jurisdiction to the fullest extent permitted by law. Each of the parties hereby irrevocably waives its right to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of the overall transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims.

- 13.9 SEVERABILITY. If any term, covenant, condition, or provision of this Agreement or the application thereof to any person and/or circumstance shall, at any time or to any extent, be found to be invalid or unenforceable by a court of law, the remainder of this Agreement or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 13.10 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. For purposes of this Section, facsimile and PDF signatures are acceptable; however, the original signature pages shall be substituted as soon as practicable.
- 13.11 ENTIRE AGREEMENT. This Agreement, including the Contract Documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.
- 13.12 DRAFTING OF AGREEMENT. The parties agree that the terms and conditions of this Agreement are the result of arm's length negotiations between the parties and/or their counsel. Neither Party shall be considered to be the drafter of the Agreement or any provision hereof for the purpose of any statute, jurisprudential rule, or rule of contractual interpretation or construction that might cause any provision to be construed against the drafter.
- 13.13 CODE OF ETHICS. CMAR acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 et seq., Code of Governmental Ethics) applies to it in the performance of its obligations under this Agreement. CMAR agrees to immediately notify SCP if potential violations of the Code of Governmental Ethics arise at any time during the term of this Agreement. CMAR's executed affidavits ("Non-Collusion Affidavit," "Attestation Affidavit," and "E-Verification Affidavit") are attached hereto.
- 13.14 NON-WAIVER. The failure of a Party to strictly enforce any provision of this Agreement shall not be deemed to act as a waiver of any provision, including the provision not so enforced. Any waiver by a Party of any term, condition, covenant, or breach of this Agreement shall not be deemed to be a continuing waiver of same.

- 13.15 **EXCLUSIVE BENEFIT.** Except as otherwise provided herein, this Agreement is entered into for the exclusive benefit of SCP and CMAR, and the parties expressly disclaim any intent to benefit any person that is not a Party to this Agreement.

SECTION 14

TAXES

- 14.1 To the extent that work is performed or materials purchased in Louisiana, CMAR shall not include in his bid any state and local sales or use tax on materials, supplies, and equipment which are purchased to be affixed, incorporated into or otherwise made a permanent part of the completed Work, as well as state and local sales or use tax on other taxable services, leases and rentals of tangible personal property used in the completion of the Agreement (hereafter referred to as “Applicable Materials and Services”).
- 14.2 All purchases of Applicable Materials and Services shall be made by CMAR in its designated capacity as Agent for and on behalf of SCP. SCP shall provide to CMAR a copy of the Department of Revenue & Taxation Form R-1020 (“Designation of Construction Contractor as Agent of Government Entity”) at the time of the Notice to Proceed for Construction. CMAR shall submit this form to the Department of Revenue and Taxation for the purpose of obtaining a Certificate of Sales Use Tax Exemption/Exclusion. CMAR shall present to vendors and suppliers of Applicable Materials and Services a copy of the Department of Revenue and Taxation Form R-1056 (“Certificate of Sales Use Tax Exemption/Exclusion”) when purchasing Applicable Materials and Services for the Project.

The designation of CMAR by SCP as its agent in accordance with LAC 61:I.4301 is for the limited purpose of purchasing Applicable Materials and Services in furtherance and performance of the Work specified in the Agreement and is not intended nor should it be construed as a designation of CMAR as agent for any other purpose.

- 14.3 All Applicable Materials purchased by CMAR as SCP’s agent exclusively for the Project specified in this Agreement, but not actually used, shall belong to and become the property of SCP. All whole, unused Applicable Materials not incorporated into the Work shall be picked up by SCP at its expense on notification by CMAR. When the said Applicable Materials are turned over to SCP, CMAR shall provide to SCP a certified list of items being transmitted to SCP. All rights and warranties with respect to the Applicable Materials shall inure to the benefit of SCP.
- 14.4 Nothing in this Article nor in any other article of these General Conditions is intended nor should be construed to alter, amend, or otherwise revise the responsibilities of CMAR, whether express or implied herein, to:
- (a) fully insure the Applicable Materials to be used on the Project or stored on or off site of the Project;
 - (b) insure the progress of the Project prior to Final Acceptance in accordance with the provisions of Section 6;
 - (c) warrant the Applicable Materials furnished under the Agreement;

- (d) indemnify SCP in accordance with the provisions of Section 8;
 - (e) alter, amend, or otherwise revise the method of payment as provided in Section 7 and Section 8;
 - (f) alter, amend, or otherwise revise the right of SCP to accept or reject any of the Work during the progress of the Project or to make or have made inspections of the Work as it progresses;
 - (g) provide for the safety, protection, and security of the Applicable Materials throughout the progress of the Project in accordance with the provisions of Section 6;
 - (h) furnish and maintain liability and property insurance coverage for damage, loss or destruction of the Applicable Materials until Final Acceptance in accordance with the provisions of Section 6; and
 - (i) remit to the pertinent taxing authority any taxes other than sales and use tax that may be applicable to the project for which SCP or CMAR as SCP's agent do not enjoy a legitimate exemption or exclusion.
- 14.5 Nothing herein shall be construed to relieve CMAR or any subcontractor from the payment of any sales, use or other taxes with respect to purchases of material, supplies or equipment which are not to be incorporated into the Work or used solely in the fulfillment of the obligations to be performed under this Agreement, provided CMAR has complied with the terms of this Agreement and all applicable laws and procedures.
- 14.6 In the event that CMAR is subject to a sales or use tax audit by either the State of Louisiana or a local taxing authority, and the taxing authority assesses taxes on any Applicable Materials and Services, SCP agrees to defend its tax-exempt status as a political subdivision and CMAR as its agent. Should the taxing authority prevail in imposing sales or use taxes on any purchases of Applicable Materials and Services, SCP agrees to reimburse CMAR for those taxes or to pay the taxes directly to the taxing authority, but only to the extent that CMAR has complied with the terms of this Agreement and all applicable laws and procedures.
- 14.7 Section 14, with regard to the exemption of CMAR as SCP's agent from the payment of sales and use taxes for the Applicable Materials and Services as defined above, is meant to alter, amend, and revise any provision contrary to Section 14 which may appear elsewhere in this Agreement with regard to the payment of sales and use taxes. Therefore, wherever throughout this Agreement there is any mention of liability for the payment of sales and use taxes for Applicable Materials and Services which conflicts with the provisions of this Section 14, the terms of Section 14 as stated herein shall control as if they were repeated each time.

SECTION 15

PROJECT SPECIFIC REQUIREMENTS

15.1 SECURITY.

- 15.1.1 As a result of heightened SCP security measures, all contractors, consultants, testing laboratory representatives, survey representatives and any other service providers seeking access to SCP property must first submit on their company's letterhead a list of

all employees authorized to be on SCP property. This list shall include the respective project/location for which the employee is assigned to perform work, prior to beginning work. Workers must have an employer issued, pictured ID card and current valid photo credentials to validate identification. In the event any immigrant workers are on site, they must carry dual identification/immigration status credentials. Please provide copies of these employee lists via email to SCP Representative. These lists must be updated and forwarded immediately to both offices prior to any new workers mobilizing to the job site.

15.1.2 CMAR shall include the terms of this Section 15 in all contracts and subcontracts at all levels for work performed under this Agreement, including supervision and oversight.

15.2 All trucks shall be within legal allowable weight limits according to local, Parish, or State requirements for truckloads, whichever are more stringent. Truck routes, within the project areas and through all SCP-owned and residential City streets to be utilized by CMAR during the Construction Phase shall be defined and furnished, if so requested, to SCP for review and approval prior to the performance of any Work. All transportation equipment shall be State inspected, mechanically safe, and equipped with backup/reverse audio alarm movement devices as required by OSHA. CMAR shall provide SCP with the specifications and plans for intended use for any cranes CMAR proposes to place on any SCP wharf to facilitate the work. SCP may require CMAR, at his expense, to provide calculations and/or drawings, stamped by a Louisiana licensed engineer, showing the crane loads on the wharf and the wharf's ability to support the crane and its associated work.

15.3 ST. CHARLES PARISH FURNISHED ITEMS.

15.3.1 CMAR's responsibility for material furnished by SCP shall begin at the point of delivery upon acceptance by CMAR. CMAR will examine each shipment prior to acceptance and shall reject all defective items.

Defective SCP-furnished materials discovered after installation and prior to final acceptance of the Work, where the defect is of a nature not detectable by visual examination and other appropriate field inspection methods, shall be replaced by SCP. CMAR shall, at his own expense, furnish all necessary tools, equipment, and appliances, and perform all necessary labor, for the removal and replacement of such defective items in a manner acceptable to SCP.

All material furnished by SCP which disappears or is damaged after its acceptance by CMAR upon delivery by SCP's supplier, shall be replaced by and at the expense of CMAR. Replacements shall conform to the original purchase specifications on file with SCP. CMAR shall accept all risk of loss or damage to SCP-furnished material from the time of its acceptance by CMAR at the delivery site until final project completion.

15.3.2 Materials furnished by SCP for installation by CMAR will be delivered f.o.b. to the site as specified in applicable sections of the Technical Specifications of the Construction Documents.

CMAR shall be responsible for all unloading, reloading, transporting to the site of installation, storage if necessary, re-handling, and installation. All items shall be unloaded promptly after arrival. All charges for demurrage due to negligence or delay by CMAR shall be paid by CMAR. Materials shall be handled by methods which will prevent damage. Scheduled delivery dates for equipment and materials to be furnished by SCP are listed in the applicable sections of the Technical Specifications. CMAR shall accept the risk of any delay in delivery of materials furnished by SCP, and if the Work is delayed, he shall have no claim for damages or contract adjustment other than an adjustment of Contract Time and the waiving of liquidated damages occasioned by the delay.