
Meeting Date: November 19, 2025

Staff Contact: David Laughlin, Planning & Engineering Division Manager

TITLE: C-25-32 – Approval of Contract with Smithco Construction, Inc., to Provide CMAR Services for the FY26 Reservoir Rehabilitation Project**ACTION: Recommend Approval****SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) issued the Request for Proposals (RFP) CP2026000002, FY26 Reservoir Rehab Project to provide CMAR services, pursuant to the CMAR Request for Qualification (CQ2026000001). The three (3) firms shortlisted for the RFP process were Bradbury Stamm Construction, Inc., RMCI Industrial, LLC., and Smithco Construction, Inc.

The RFP was posted on BidNet. Two (2) responses were received and submitted for evaluation. The CMAR Selection Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Based on the recommendation of the CMAR Selection Committee, the Executive Director recommends the award of a contract to Smithco Construction, Inc., as they had the highest composite score, is qualified to perform the work, and meet the requirements of the RFP. The highest total composite score possible without preferences applied is 100. All scores listed are the combined average of all Committee members with applicable preferences applied. The respective scores are as follows:

<u>Offeror</u>	<u>Total Composite Scores</u>
Smithco Construction Inc.	98
Bradbury Stamm Construction Inc.	87

Approval of this item will delegate signature authority to the Executive Director to enter into a contract with Smithco Construction, Inc., to perform the CMAR services for FY26 Reservoir Rehab Project. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to these agreements, if any.

If approved by the Board, Agreements will be executed between the Water Authority and **Smithco Construction, Inc.**

FISCAL IMPACT:

The funding has yet to be estimated but is expected to exceed the \$500K threshold.

CP2026000002

FY26 RESERVOIR REHAB PROGRAM

DRAFT

CONSTRUCTION MANAGEMENT AT-RISK (CMAR) AGREEMENT



Albuquerque Bernalillo County
Water Utility Authority

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

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FY26 CMAR Reservoir Rehab Program

Agreement Between Owner and Construction Manager at-Risk (CMAR)

(Where the Basis of Payment is either the Cost of the Work Plus CMAR's Fee Not to Exceed a Guaranteed Maximum Price, or a Lump Sum Contract Price)

Agreement

This Agreement is made this ____ day of _____ in the year 20__ (the "Contract Date"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and between the

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OWNER:

Albuquerque Bernalillo County Water Utility Authority

PO Box 568, Albuquerque, NM 87103

and the

CONSTRUCTION MANAGER AT-RISK (CMAR):

Smithco Construction, Inc. Company Name

PO Box 415, Caballo, NM 87931 Address

City, State, Zip

for services in connection with the following Project:

PROJECT NO.: TBD

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PROJECT NAME: FY26 CMAR Reservoir Rehab Program

PROJECT LOCATION:

Reservoir	Address
Burton Reservoir 1	1200 Wellesley Dr. SE
Charles Wells Reservoir	7413 Cutler Ave. NE
Duranes Reservoir	1917 Cherry Ln. NW
Lomas Reservoir 1 & 2	13200 Skyview Ave. NE
Love Reservoir 2	10611 Lomas Blvd. NE
Santa Barbara Reservoir 2	3301 Claremont Ave. NE

Commented [AM3]: Were we updating this order?

PROJECT SUMMARY: Inspect and repair the above identified reservoirs

PROJECT PHASING: Preconstruction Phase I and Construction Phase II Services

Notice to the Owner and/or CMAR (each individually a “Party” and collectively, the “Parties”) shall be given at the above addresses.

Accordingly, the Parties hereto hereby agree as follows.

1. ARTICLE 1 — Definitions

1.1. Definitions

1.1.1. “Agreement” means this Agreement between Owner and CMAR (where the Basis of Payment is defined herein, and includes the exhibits and attachments made part of this Agreement upon its execution), as modified by subsequent Amendments.

1.1.2. “Allowance” is an estimated sum to be used as Owner directs for categories of Work that cannot be established at the time the GMP or Fixed Price are agreed upon. Owner can direct Work under Allowances only up to the established amount. Any work directed over the established Allowance amount is to be processed by Change Order to CMAR.

1.1.3. “Applicable Law” or “Applicable Laws” means, collectively, all applicable federal, state, and local laws, statutes, rules, regulations, tariffs, levies, embargoes, ordinances, codes, and binding administrative or judicial precedents or authorities, including the binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation, or administration thereof, and all applicable administrative orders, directed binding duties, licenses, authorizations, and permits of, and binding agreements with, any Governmental Authority, in each case applicable to or affecting the Project or the Work of CMAR under this Agreement or the other Contract Documents.

1.1.4. “Assumptions” and “Clarifications” are material terms associated with CMAR’s Guaranteed Maximum Price or Lump Sum upon which the Owner and CMAR agree and are more particularly described in Attachment 23 of the Phase II Construction Price Amendment.

1.1.5. The term “Bid Documents” means the Request for Bids (RFB), including the Advertisement for Bids, the Instructions to Bidders, the Special Instructions, the Bid Proposal Instructions and Forms, the Wage Rate Decision, the Referenced Standard Specifications, all forms, checklists and instructions, and other documents attached.

1.1.6. “Bid Package” or “Bid Packages” means one or more design bid packages for specific scopes of the Work that are developed and generated by the Engineer for bidding and award pursuant to this Agreement.

1.1.7. “Board” is the governing body of the Owner.

1.1.8. The term “Business Day” or “business day” means any day other than a Saturday, Sunday, or legal holiday on which national banks located in the state

jurisdiction in which the Project is situated are not required or permitted to be open for business to the public.

1.1.9. A “Change Order” is a written order signed by the Owner and the CMAR after execution of this Agreement indicating any change to the Agreement including, among other things, changes in the Scope of the Work, the CMAR’s Fee for Preconstruction Phase Services, the Phase II Construction Price and Date of Substantial Completion, or Date of Final Completion.

1.1.10.A “Change Order Proposal” is a proposal submitted by the CMAR or the Owner for a change in the Work as evidenced by a Change Order.

1.1.11.The “CMAR” is Smithco Construction, Inc[NAME].

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1.1.12.The “CMAR Representatives” are is Twister Smith and Brett Smith[NAME].

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1.1.13. “Construction Phase” or “Construction Phase Services” means the Work of the CMAR undertaken during Phase II pursuant to the Drawings and Specifications in accordance with Article 2.2 of this Agreement and other applicable terms and provisions of this Agreement and the other Contract Documents.

1.1.14. “Construction General Conditions Costs” are an element of the Cost of Work that is included in the Construction Price as agreed to by the CMAR and the Owner and has the meaning set forth in Article 5 of the Phase II Construction Price Amendment.

1.1.15. “Contingencies,” where applicable, has the meaning set forth in Article 10.5 of the Phase II Construction Price Amendment.

1.1.16.The “Contract Documents” represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. It consists of this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, information furnished by the Owner under Article 3.8 of the General Conditions, any supplemental or other conditions attached as an exhibit to this Agreement, performance Specifications attached as an exhibit to this Agreement, the CMAR’s qualifications, Assumptions, and Clarifications mutually agreed upon by Owner and CMAR and identified in and attached to this Agreement and/or the Phase II Construction Price Amendment, the other documents listed in this Agreement, and any modifications issued after its execution, including, without limitation, Change Orders and Owner Change Directives. The Contract Documents do not include the advertisement or invitation to bid, instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals bidding instructions or sample forms not attached as exhibits to this Agreement.

1.1.17. The “Contract Time” is the overall time period allowed for performance of the Work.

1.1.18. “Cost of the Work,” where applicable, has the meaning of the sum of all allowed direct and indirect costs necessarily and reasonably incurred and paid by CMAR in the performance of the Work including those set forth in the Phase II Construction Price Amendment.

1.1.19. The term “Day” or “day” shall mean calendar day unless otherwise specifically defined.

1.1.20. “Defective Work” is any portion of the Work that does not conform to the Contract Documents, as more fully described in Articles 2.4 and 2.5 of the General Conditions.

1.1.21. “Differing Site Conditions” means conditions at the Project site that are: (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents. Unexpected Hazardous Materials not brought to the site by CMAR shall be considered a Differing Site Condition.

1.1.22. “Drawings” means the documents prepared by Engineer or other consultants of Owner showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.23. “Early Work(s) Package(s)” is procurement or construction work that may be performed during Phase I or Phase II that may benefit the Project.

1.1.24. “Engineer” (or “Design Engineer”) means the licensed Engineer and its consultants, retained by Owner to perform design services for the Project. The Engineer for the Project is AECOM Technical Services, Inc.

1.1.25. “Engineer Contract” means the engineering contract dated September 19, 2022 between Owner and Engineer for the design and/or engineering of the Project or portions thereof.

1.1.26. “Fee” or “CMAR Fee” means, where a GMP has been selected by the Owner and CMAR as the basis for establishing a Phase II Construction Price for the Project or Bid Package, as applicable, the Fee to be charged by the CMAR, which shall either be (a) expressed as a percentage of the Cost of the Work, or (b) a fixed dollar amount based on the Cost of the Work, in each case agreed upon by the Owner and the CMAR at the time of execution of, and in accordance with, the Phase II Construction Price Amendment for the CMAR’s performance of the Work.

1.1.27. "Field Order" means minor changes in the Work if the changes do not involve an adjustment in the Phase II Construction Price or the Contract Times and are compatible with the design of the completed Project as a functioning whole as indicated by the Contract Documents.

1.1.28. "Final Completion" occurs on the date when the CMAR's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable in accordance with Article 14 of the Phase II Construction Price Amendment and Article 8.9 of the General Conditions. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the CMAR.

1.1.29. "Final Payment" has the meaning set forth in Article 14 of the Phase II Construction Price Amendment.

1.1.30. "Force Majeure," as defined in the General Conditions in Article 5.4.1.3.

1.1.31. The "General Conditions" to the Agreement is included as **Exhibit A**.

1.1.32. "GMP" or "Guaranteed Maximum Price" means, with regard to the Project as a whole or any Bid Package for construction of any portion of the Work where a GMP is selected by the Parties as the basis for the Phase II Construction Price, as may be further defined in the Phase II Construction Price Amendment for the Project, as applicable. The Guaranteed Maximum Price for the Work covered thereby, as established by a Phase II Construction Price Amendment executed by and between Owner and CMAR, is further defined as the Cost of Work plus Allowances and fee for such Work. Subject to Change Orders and other allowable adjustments made pursuant to this Agreement or the other Contract Documents, where the Phase II Construction Price for any Work is based on a GMP, the Phase II Construction Price for such Work shall not exceed the GMP for such Work plus any approved additions or deductions to the GMP.

1.1.33. "Governmental Authorities" means any federal, state, local, or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank, public office, court, arbitration or mediation panel, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of government.

1.1.34. "Key Firm" means the Subcontractor fulfilling a key role identified in CMAR's Statement of Qualifications and are committed to deliver the Work.

1.1.35. "Key Personnel" means the individuals, employed by the CMAR or Key Firms included on the Project Team, who fill certain key roles in delivery of the Project and related services. The individual may be referred to as a "Key Person."

1.1.36. “Lump Sum” means a lump-sum contract price established for the Phase I Preconstruction Services, and may be established for Phase II Construction Services in accordance with a Phase II Construction Price Amendment.

1.1.37.A “Material Supplier” is a person or entity retained by the CMAR or a Subcontractor to provide material or equipment for the Work.

1.1.38. “Notice to Proceed” is a written notice given by the Owner to the CMAR fixing the date on which the Contract Time will commence to run and on which the CMAR shall start to perform its obligations under the Agreement. The Notice to Proceed may be executed by means of a purchase order.

1.1.39. “Others” means other contractors, Material Suppliers, and persons at the Worksite who are not employed by the CMAR or Subcontractors.

1.1.40. “Owner” is the Albuquerque Bernalillo County Water Utility Authority and includes the Owner’s representative and any other Owner authorized person or entity.

1.1.41. “Owner’s Approved Budget” means the sum of \$290,000,000.

1.1.42. “Owner Change Directive” means a directive issued by Owner to CMAR to undertake and perform a change in the Work prior to the time such Parties have reached agreement on the adjustment, if any, of the Phase II Construction Price or the Contract Time.

1.1.43. The Owner’s authorized representative is [NOT USED] (the “Owner’s Representative”).

1.1.44. “Phase I” means the Preconstruction Phase Services performed by CMAR pursuant to this Agreement and the other Contract Documents.

1.1.45. “Phase II” means the Construction Phase Services performed by CMAR pursuant to this Agreement and the other Contract Documents.

1.1.46. “Phase II Construction Price” means the contract price established by the Parties for CMAR’s performance of the Work during the Construction Phase in accordance with this Agreement and the other Contract Documents and as reflected in the Phase II Construction Price Amendment, as the same may be modified by any Change Orders increasing or reducing such contract price and may be either a Lump Sum price or GMP.

1.1.47. “Phase II Construction Price Amendment” has the meaning given to it in **Exhibit B** (Phase I Preconstruction Services Scope of Work).

1.1.48. “Phase II Construction Price Proposal” has the meaning given to it in **Exhibit B** (Phase I Preconstruction Services Scope of Work).

1.1.49. “Preconstruction Phase” or “Preconstruction Phase Services” means the Phase I Preconstruction Services performed by CMAR in connection with the Project and described in Article 2.1 of this Agreement.

1.1.50. “Procurement Ordinance” means the Bernalillo County Procurement Ordinance which the Owner has adopted, pursuant to the powers granted in Section 72-1-10 NMSA 1978, to govern all purchasing transactions of the Owner; as currently enabled or hereafter amended.

1.1.51. “Project” is the building, facility, or other improvements for which the CMAR is to perform Work under this Agreement. It may also include construction by the Owner or Others which is not part of the Work of this agreement.

1.1.52. “Project Team” The CMAR, Key Firms (such as subcontractors and subconsultants), and Key Personnel identified in the CMAR’s SOQ and included in CMAR’s Proposal.

1.1.53. “Risk Register” is the result of an assessment led by either the Owner or the CMAR, and agreed to by both parties, that identifies potential project risks and the likelihood of occurrence and allocates the responsibility for mitigation of each risk element.

1.1.54. “Schedule” is the critical path method (CPM) schedule prepared by the CMAR that specifies the dates on which the CMAR plans to begin and complete various parts of the Work, including all activities during Phase I Preconstruction and Phase II Construction.

1.1.55. “Schedule Update” means any update to the Schedule prepared and submitted by CMAR to Owner concurrently with CMAR’s submission to Owner of a Phase II Construction Price Proposal, a Phase II Construction Price Amendment, or as otherwise required or permitted hereunder.

1.1.56. “Shop Drawings” means the all drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the CMAR, a Subcontractor, manufacturer, supplier, or distributor and which illustrate the equipment, material, or some portion of the Work.

1.1.57. “Specifications” means the documents prepared by Owner, Engineer, or other consultant of Owner consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.1.58.A “Subcontractor” is a person or entity retained by the CMAR as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The Subcontractor obligations within this Agreement shall also apply to the CMAR for all self-perform trade work.

1.1.59. “Substantial Completion of the Work,” or “Substantially Complete” or a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the beneficial use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Engineer and CMAR with Owner’s consent. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the CMAR’s control. In addition to and without limiting the generality of the foregoing requirements of this Article 1.1.55, “Substantial Completion” of the Work or a portion of the Work shall not be deemed to have occurred unless and until the Project or a portion thereof is available for beneficial use and satisfies any other requirements set forth in the Phase II Construction Price Amendment.

1.1.60.A “Sub-subcontractor” is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

1.1.61. “Work” means the construction and services necessary or incidental to fulfill the CMAR’s obligations for the Project in conformance with this Agreement and the other Contract Documents.

1.1.62. “Work Order” means the assignment by the Owner of a construction project to a Prequalified Contractor; the contract for the specific project assigned; the Work Order Documents.

1.1.63. “Worksite” means the location of the Project as identified in Page 3 of this Agreement where the Work is to be performed.

1.1.64. Capitalized terms used herein but not defined herein shall have the meanings given them in the Phase II Construction Price Amendment, General Conditions, and other Contract Documents.

2 ARTICLE 2 — CMAR Responsibilities

2.1 Phase I Preconstruction Phase Services

2.1.1 Commencement. Preconstruction Phase Services, as described in **Exhibit B** attached hereto, shall commence no later than 10 days following the Owner’s issuance of a Phase I Notice to Proceed in substantially the form of **Exhibit C** attached hereto and incorporated herein by this reference with the appropriate box

checked. For the performance of the Preconstruction Phase Services CMAR shall be paid the Preconstruction Phase Services fees in the amount and in the manner set forth in Article 6.1.

2.1.2 Early Work(s) Package(s). If applicable, Early Work(s) Package(s) commenced prior to mutual execution of a Phase II Construction Price Amendment shall be performed and paid for pursuant to **Exhibit D** and **Exhibit D.1** to this Agreement but otherwise subject to the terms, covenants, and conditions of this Agreement and the other Contract Documents.

2.1.3 Completion. CMAR's Preconstruction Phase Services shall be deemed to have been completed upon mutual execution of a Phase II Construction Price Amendment for the Work, hereto attached as **Exhibit E**, covered by the Construction Phase Services. If the Owner and CMAR are unable to reach a written agreement on a Phase II Construction Price Amendment, the Owner may terminate this Agreement for convenience on 5 business days' written notice to the CMAR in accordance with Article 10.3 of the General Conditions. In the event of such termination for convenience, the CMAR shall be compensated for (1) the portion of the CMAR's Preconstruction or Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed, plus (2) reasonable demobilization costs, if any, which shall include, but not be limited to, reasonable cost(s) incurred by CMAR to break contractual obligations with Subcontractors, Subconsultants, Suppliers, Vendors, and Materialmen entered prior to Subcontractor's receipt of the notice of termination. In such event, the CMAR shall have no obligation to perform the Scope of Work covered by such unexecuted Phase II Construction Price Amendment.

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2.2 Phase II Construction Phase Services

2.2.1 Commencement. Unless otherwise provided to the contrary elsewhere in this Agreement or the other Contract Documents, CMAR's Construction Phase Services shall commence as specified in the Phase II Notice to Proceed.

2.2.2 Self-Perform Work. As part of the CMAR's Construction Phase Services, the CMAR may be entitled to self-perform work on a negotiated basis or competitively bid against the market in accordance with applicable law and Owner approval. Any self-perform Work, whether negotiated or competitively bid, that is approved by the Owner is subject to the terms and conditions of and as identified in **Exhibit B** and the following provisions of this Article 2.2.2.

2.2.2.1 The CMAR may seek to perform portions of the Work itself, other than minor work that may be included in the CMAR's Construction General Conditions Costs, if the CMAR or CMAR team member submits its proposal and is awarded for those portions of Work in the same manner as all other

Subcontractors. If the CMAR intends to submit a proposal for such Work, it shall notify Owner prior to soliciting Proposals and all such proposals shall be submitted directly to the Owner in accordance with **Exhibit B**. If the Owner determines that the CMAR's bid or CMAR team member's proposal provides the best value, based on cost and relevant experience for the Owner, the CMAR or CMAR team member may be awarded that portion of the Work.

2.2.2.2 If a selected Subcontractor defaults in the performance of its Work or fails to execute a subcontract after being selected in accordance with this Article, the CMAR may, without advertising, fulfill the contract requirements through selection of an alternate Subcontractor or self-performance, in each case with the Owner's prior written approval. Owner shall be notified in the event of a Subcontractor default or failure to execute the subcontract.

2.2.2.3 Work identified pursuant to **Exhibit B** and performed directly by the CMAR shall be approved by the Owner. For any Work that will be performed by the CMAR, bids or request for proposal shall be submitted to and reviewed by the Owner and Engineer or any other neutral party as determined by the Owner to avoid a conflict of interest.

3 ARTICLE 3 — Owner Responsibilities

- 3.1 Owner Responsibilities. Owner shall be responsible for providing the information and delivering the materials set forth in Article 3 of the General Conditions.

4 ARTICLE 4 — Subcontracts and Labor Relations

- 4.1 Subcontractors. The work not performed by the CMAR with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a Lump Sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor. Owner may require CMAR to competitively bid subcontracts for services or supplies that are over \$250,000. CMAR may subcontract any services or supplies that are under \$250,000 without the approval or competitive requirement to Subcontractors.

4.2 Labor Relations

4.2.1 Prevailing Wages.

4.2.1.1 The current prevailing wage rate determinations for public works contracts by the Owner, the Director of the State Department of Work Force Solutions, and, if federal funding is used for the Project, the current General Wage Determination Decisions, as determined by the US Secretary of Labor,

as same may be changed during the term of this Agreement, are incorporated by this reference.

4.2.1.1.1 Davis-Bacon. Should Owner obtain federal funding for the Project, CMAR shall be responsible for ensuring that all subcontracts and Subcontractors fully comply with all applicable requirements of the Davis-Bacon Act, including but not limited to applicable prevailing wage, contractual provisions, and recordkeeping.

4.2.1.1.2 CMAR shall pay any person performing labor necessary to complete any portion of Work on the Project not less than the highest general prevailing rate of wages. If federal funds are used for the Project, where the minimum rate of pay for any classification differs among city, state, and federal wage rate determinations, the highest rate of pay shall prevail.

4.2.1.1.3 CMAR shall include, in any contract or subcontract relating to Work on the Project, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed.

4.2.2 Compliance Monitoring. CMAR shall require every subcontract to provide certified payroll reports with respect to all persons performing labor necessary to complete any portion of Work on the Project.

4.2.3 Nondiscrimination / Nonharassment. CMAR shall not engage in any form of discrimination or harassment because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, or any other protected classification against any employee or applicant for employment on the Project.

5 ARTICLE 5 — Time

5.1 Performance of the Work

5.1.1 Date of Commencement. The Date of Commencement of the Preconstruction Phase Services and Construction Services, as applicable, shall be as set forth in Article 5.1.1 of the General Conditions. The Work shall proceed in general accordance with the Schedule of Work as such Schedule may be amended from time to time, subject to other provisions of this Agreement. The Schedule is subject to allowable adjustments in the Contract Time as permitted herein or in the other Contract Documents.

5.1.2 Substantial / Final Completion. Unless the Parties agree otherwise, the Date of Substantial Completion and the Date of Final Completion shall be established pursuant to the Phase II Construction Price Amendment, subject to adjustments as provided for in the Contract Documents. If a Phase II Construction Price is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth via Amendment.

5.1.3 The CMAR shall not knowingly commence the Work before the effective date of insurance to be provided by the CMAR and Owner as required by the Contract Documents.

5.2 Schedule of the Work

5.2.1 The initial Schedule is attached hereto as **Exhibit F**.

5.2.2 Owner will timely review the baseline Schedule submitted by CMAR. If the Owner determines that additional supporting data are necessary to fully evaluate the Schedule, the Owner will request additional supporting data in writing. Such data shall be furnished no later than 14 days after the date of such request. Owner will render a decision promptly and in any case within 21 days after the latter of the receipt of the Schedule update or the deadline for furnishing such additional supporting data. Owner shall review, approve, and/or provide comments in a reasonable time.

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5.2.3 Contemporaneously with CMAR's submission of its Phase II Construction Price Proposal in accordance with Phase II Construction Price Amendment, the CMAR shall submit to the Owner and, if directed, the Engineer, a Schedule Update, in compliance with the technical scheduling requirements attached hereto as **Exhibit G** and the requirements of this Article 5.2, that shall show the dates on which the CMAR plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

5.3 Contract Time, Delays, and Extensions of Time

5.3.1 The CMAR shall achieve Substantial Completion of the Work within the timeframes established in the Phase II Construction Price Amendment(s) of the Project (the "Contract Time"). In addition, the CMAR shall achieve Final Completion of each phase within thirty (30) days of Substantial Completion of the Work.

5.3.2 The Contract Time, as it may be modified from time to time in accordance with this Agreement and any other applicable Contract Documents, shall control the determination of liquidated damages payable to CMAR under Article 5.4 and in the determination of any delay under Article 5.3 of this Agreement.

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5.3.3 In the event delays to the Work are encountered for any reason, the CMAR shall provide prompt written notice to the Owner of the cause of such delays after CMAR first recognizes the delay. Excusable delays shall be adjusted upon and subject to the terms and conditions of Article 5 of the General Conditions.

5.3.4 A waiver of or failure by the Owner or Owner's Representative to enforce any requirement in this Article 5 hereof or the requirements of Article 5 of the General Conditions, including, without limitation, the requirements in Article 5.3 thereof, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the Owner or Owner's Representative from enforcing such requirements in connection with any present or future delays.

5.4 Liquidated Damages

5.4.1 Substantial Completion. The Owner and the CMAR agree that this Agreement shall provide for the imposition of liquidated damages for any CMAR delay not excused by Article 5.3 hereof or elsewhere in this Agreement.

5.4.1.1 The CMAR agrees that if the Work of the Project is not Substantially Completed on or before the Substantial Completion Date applicable to the Project or related Bid Package, the CMAR shall pay the Owner as liquidated damages the amount defined in Article 3 of the Phase II Construction Price Amendment and not as a penalty of unexcused delay past the Substantial Completion Date. The liquidated damages shall be the sole and exclusive remedy for any unexcused delay in the performance of CMAR's obligations hereunder and shall be in lieu of any and all other liability to the Owner for extra costs, losses, expenses, claims, penalties and any other damages of whatever nature (whether actual, compensatory, direct, indirect, special, consequential, punitive, or otherwise) incurred by the Owner and which are caused by any unexcused CMAR delay in timely achieving Substantial Completion on or before the Substantial Completion Date. The Parties acknowledge and agree that it would be extremely difficult, if not impossible, to quantify the economic loss incurred by the Owner as a result of such unexcused delay, that the liquidated damages contemplated herein are reasonable and represent a fair approximation of the economic loss to be incurred by Owner as a result of such unexcused delay, and that such liquidated damages shall be enforceable to the maximum extent permitted under Applicable Law.

5.4.2 Final Completion. The Owner and the CMAR agree that this Agreement shall provide for the imposition of liquidated damages for any CMAR delay not excused by Article 5.3 hereof or elsewhere in this Agreement.

5.4.2.1 The CMAR agrees that if the Work of the Project is not Finally Completed on or before the Final Completion Date applicable to the Project or related Bid Package, the CMAR shall pay the Owner as liquidated damages the amount defined in Article 3 of the Phase II Construction Price Amendment and not as a penalty for unexcused delay past the Final Completion Date. The liquidated damages provided herein shall be the sole and exclusive remedy for any unexcused delay in the performance of CMAR's obligations hereunder and shall be in lieu of any and all other liability to the Owner for extra costs, losses, expenses, claims, penalties and any other damages of whatever nature (whether actual, compensatory, direct, indirect, special, consequential, punitive, or otherwise) incurred by the Owner and which are caused by any unexcused CMAR delay in timely achieving Final Completion on or before the Final Completion Date. The Parties acknowledge and agree that it would be extremely difficult, if not impossible, to quantify the economic loss incurred by the Owner as a result of such unexcused delay, that the liquidated damages contemplated herein are reasonable and represent a fair approximation of the economic loss to be incurred by Owner as a result of such unexcused delay, and that such liquidated damages shall be enforceable to the maximum extent permitted under Applicable Law.

6 ARTICLE 6 — Compensation

6.1 CMAR's Compensation for Preconstruction Phase Services

- 6.1.1 The Owner shall compensate CMAR for performance of the CMAR's Preconstruction Phase Services outlined in Article 2.1 hereof on the basis Lump Sum amount of **Five Hundred Ninety-Five Thousand, Three Hundred Sixty-Three and 00/100 Dollars (\$595,363.00)**, which amount excludes any applicable New Mexico Gross Receipts Tax, (the "Preconstruction Phase Services Cost"). The Preconstruction Phase Services cost shall be paid as set forth in the General Conditions. The CMAR's applications for payment shall be itemized and supported by the Phase I Schedule of Values and any other substantiating data as required by the Contract Documents. Schedule of Values shall be developed, approved, and maintained in accordance with **Exhibit B**. Costs that would cause the Preconstruction phase services amount to be exceeded shall be paid by the CMAR without reimbursement by the Owner. The CMAR's Fee does not apply to Preconstruction Phase Services, and any savings from the not-to-exceed amount for Preconstruction Phase Services will revert to the Owner.

6.2 CMAR Compensation for Early Work(s) Package(s)

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6.2.1 If the Parties agree to negotiate Early Work Packages, refer to **Exhibit D**. Services performed for Early Works shall be subject to this Agreement and the General Conditions and other provisions of the Contract Documents applicable to the Phase II Construction Services.

6.3 CMAR's Compensation for Construction Phase II Services

6.3.1 The Owner shall compensate the CMAR for Work performed and described in a Phase II Construction Price Amendment on the basis of either a Lump Sum Phase II Construction Price or Guaranteed Maximum Price, in each case as set forth in such Phase II Construction Price Amendment and General Conditions.

6.4 Hourly Rates

6.4.1 Where Work or portions thereof performed by the CMAR for Preconstruction Phase I Services is charged on an hourly rate basis, such Work shall be subject to and completed in accordance with the CMAR's hourly rate schedule attached hereto as **Exhibit H** and incorporated herein by this reference and shall be inclusive of markup for overhead and profit. A separate hourly rate schedule for Construction Phase Services shall be attached to the Phase II Construction Price Amendment upon Owner's and CMAR's mutual execution of the same.

7 ARTICLE 7 — Changes

- 7.1 Changes. Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, Owner Change Directive, and Field Order, in each case in accordance with and subject to the terms and provisions of Article 7 of the General Conditions and any Phase II Construction Price Amendment executed in connection herewith for the Project.

8 ARTICLE 8 — Payment Compensation

- 8.1 Preconstruction Phase I. Payments for Preconstruction Phase I Services shall be made monthly in proportion to services performed unless otherwise agreed, in writing, by Owner and CMAR. Payments are due and payable upon presentation of the CMAR's request for payment. CONTRACTOR shall be entitled to interest on any periodic payment or final payment because of a delay in payment by OWNER in accordance with the provisions of the Procurement Ordinance, as currently enacted or hereafter amended.
- 8.2 Construction Phase II. Payments for Construction Phase Services performed following the execution of a Phase II Construction Price Amendment for the same shall be made in accordance with such Amendment and the General Conditions.

9 ARTICLE 9 — Liability

9.1 Waiver of Consequential Damages

9.1.1 Except for (a) damages mutually agreed upon by the Parties as liquidated damages in Article 5.4 hereof, and (b) subject to the following provisions set forth in this Article 9.1, notwithstanding anything else herein to the contrary, the Owner and the CMAR agree to waive all claims against each other for any consequential or other special damages that may arise out of or relate to this agreement. The Owner agrees to waive consequential or other special damages including, but not limited to, the Owner's loss of use of the Project, any rental expenses incurred, loss of tax abatements or credits, cost of substitute facilities or services, cost of purchased or replacement product or claims from customers or suppliers of Owner, loss of income, profit, or revenue related to the Project, as well as the loss of business, opportunity, loss of financing, ~~principal office overhead and expenses~~, loss of profits not related to this Project, loss of reputation or goodwill and/or insolvency regardless of whether any of the foregoing are found to be direct or indirect. The CMAR agrees to waive consequential damages including, but not limited to, loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation and / or insolvency. The provisions of this Article shall also apply to the termination of this Agreement and shall survive such termination. Under no circumstance will a cost incurred by CMAR in prosecuting the work be consequential damage waived by this provision of Agreement.

9.2 CMAR's Limitation of Liability

9.2.1 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the maximum liability, in the aggregate, of the CMAR, its Subcontractors, sureties (if any) and their respective officers, directors, shareholders, employees, agents, successors and assigns to Owner and anyone claiming by, through, or under Owner for any loss, damage, suit, action, liability, claim, or expense caused by, resulting from, or arising out of or relating in any way to this Agreement or the Project from any cause whatsoever, including, without limitation, the negligence, breach of contract, strict liability, express or implied warranty, indemnity, professional errors or omissions, or any other cause arising at law or in equity, shall in all events be limited to and not exceed 50% of the Phase II Construction Price. This limitation has been freely bargained for by the Parties for valuable consideration and shall be enforceable to the maximum extent permitted by applicable law.

9.3 Releases, waivers, and limitations on liability and remedies expressed in the Contract Documents shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability

of the benefited Party, and shall extend to and benefit the Subcontractors, agents, employees, officers, directors, assignees, affiliates, and vendors and each of their respective Subcontractors, agents, employees, officers, directors, assignees, affiliates, and vendors of each Party.

10 ARTICLE 10 — Dispute Mitigation and Resolution

10.1 Claims Procedures

10.1.1 Claims procedures are governed by Article 11 of the General Conditions.

10.2 Preconstruction Phase I Services

10.2.1 If, during the Preconstruction Phase Services the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) business days from the date of first discussion, the Parties shall submit such matter to the mediation procedures identified in Article 11.2.2 of the General Conditions as a condition precedent to any judicial forum or voluntary binding alternative dispute resolution proceeding subsequently agreed to by the Parties.

10.3 Construction Phase II Services

10.3.1 During the Construction Phase Services, the Parties shall resolve any disputes between them in accordance with the dispute mitigation and resolution procedures selected by them in Article 11 of the General Conditions.

11 ARTICLE 11 — Miscellaneous Provisions

11.1 Governing Law

11.1.1 This Agreement shall be governed by the law in effect at the location of the Project.

11.2 Severability

11.2.1 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.3 No Waiver of Performance

11.3.1 The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

11.4 Titles and Groupings

11.4.1 The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's Specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs, or the use of headings be construed to limit or alter the meaning of any provisions.

11.5 Joint Drafting

11.5.1 The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

11.6 Federal Financial Assistance.

11.6.1 The Project is anticipated to be funded through a combination of low interest State Revolving Funds (SRF), municipal bonds, and/or cash. Owner funding support, and costs associated with administration of funding requirements, is included in General Conditions cost. See Exhibit J for certain requirements associated with the Project funding, which requirements are incorporated into this Agreement by reference. The Owner and the CMAR anticipate that additional funding requirements will be incorporated into the Agreement via amendment and/or as part of the Phase II Construction Price Amendment.

11.7 Counterparts; Electronic Signatures

11.7.1 This Agreement, the General Conditions, and other Contract Documents may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Facsimile or

electronic signatures on this Agreement and/or the other Contract Documents, as applicable, shall be deemed originals for all purposes.

11.8 Attorneys' Fees

11.8.1 In the event of any claim, controversy, or dispute involving this Agreement, the Parties' performance hereunder or interpretation hereof, the substantially prevailing Party in such claim, controversy, or dispute shall be awarded its reasonable attorneys', arbitration, and expert fees and costs, including attorneys' fees and costs of any associated appeal.

11.9 Exhibits, Schedules, and Addenda

11.9.1 Exhibits, schedules, and addenda bearing on the payment and performance of the Construction Phase Services will be attached to the Phase II Construction Price Amendment for such Construction Phase Services. The following exhibits pertaining to the Phase I Preconstruction Phase Services are attached hereto and incorporated herein by this reference:

- Exhibit A General Conditions to Agreement
- Exhibit B Phase I Preconstruction Services Scope of Work
- Exhibit C Phase I Notice to Proceed
- Exhibit D Phase I Early Work(s) Package(s) (NOT USED)
- Exhibit D.1 Phase I Early Work(s) Package(s) Amendment Form (NOT USED)
- Exhibit E Phase II Construction Price Amendment (for reference only, executed upon Phase II Notice to Proceed)

Exhibit F Initial Schedule of Work

Exhibit G Project Technical Scheduling Requirements (NOT USED)

Exhibit H Preconstruction Phase Services Hourly Rate Schedule

Exhibit I Project Technical Performance Requirements

Exhibit J Anticipated Funding Requirements

Exhibit K Pricing Information Form

Other

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This Agreement is entered into as of the date entered in Article 1.

OWNER:
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BY:
Mark S. Sanchez
Executive Director

BY:
Christopher P. Melendrez
General Counsel

CONSTRUCTION MANAGER AT-RISK (CMAR):
~~Insert CMAR Name~~ SMITHCO CONSTRUCTION, INC.

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BY:
PRINT NAME _____
PRINT TITLE _____

FY26 CMAR Reservoir Rehab Program

CP2026000002

FY26 CMAR RESERVOIR REHAB PROGRAM

Exhibit A—General Conditions to Agreement



Albuquerque Bernalillo County
Water Utility Authority

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

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FY26 CMAR Reservoir Rehab Program

General Conditions to Agreement Dated

_____, 20____ (“Agreement”)

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Between

Albuquerque Bernalillo County Water Utility Authority, as Owner (“Owner”), whose address is:

PO Box 568, Albuquerque, NM 87103

and

Smithco Construction, Inc., as Construction Manager at-Risk (“CMAR”), whose address is:

PO Box 415, Caballo, NM 87931

For the following Project (“Project”):

FY26 CMAR Reservoir Rehab Program

In which AECOM Technical Services, Inc. is the Engineer (“Engineer”).

Capitalized terms used herein but not defined herein shall have the meanings given them in the Agreement, Phase II Construction Price Amendment, and other Contract Documents.

2. ARTICLE 1 — General Provisions

2.1. Contract; Order of Precedence

The Contract Documents are enumerated in the Agreement and consist of the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Agreement, other documents or exhibits listed in or attached to the Agreement, and Modifications issued after execution of the Agreement. A “Modification” is (a) a written amendment to the Agreement signed by both the Owner and the CMAR (each a “Party” and collectively, the “Parties”), (b) a Change Order, (c) an Owner Change Directive, or (d) a written order for a minor change in the Work issued by the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the CMAR’s bid or proposal, or portions of addenda relating to bidding or proposal requirements. Conflicts, ambiguities, or inconsistencies between or amongst the Contract Documents are governed by and subject to the order of precedence set forth in Article 1.1.5 hereof.

2.1.1. The Drawings and Specifications are complementary. If Work is shown only on one but not on the other, the CMAR shall confirm with the Owner prior to performing the Work. If Work is confirmed by the Owner, the CMAR shall perform the Work as though fully described on both, in all cases consistent with the Contract Documents.

2.1.2. In case of conflicts or inconsistencies between the Drawings and Specifications, the Owner and the CMAR shall attempt to resolve the conflict or inconsistency through mutual and good faith discussions and if the Parties are unable to resolve the matter in a mutually satisfactory manner, the CMAR shall be entitled to submit a Claim in accordance with Article 11 hereof for the increased cost and time caused by or resulting from such conflict or inconsistency.

2.1.3. Where figures are given, they shall be preferred to scaled dimensions.

2.1.4. Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Agreement or these General Conditions, shall be interpreted in accordance with their well-known meanings.

2.1.5. In the event of a conflict between provisions of any of the Contract Documents which cannot be resolved by giving effect to both provisions, the order of precedence of the Contract Documents in descending order, shall be as follows:

2.1.5.1. Amendments and Change Orders, with precedence of amendments and Change Orders in reverse order of execution;

2.1.5.2. The Agreement, including all exhibits thereto; in event of a conflict between the body of the Agreement and (or between) Agreement exhibits which cannot be resolved by giving effect to both provisions, the order of precedence shall be the body of the Agreement followed by the exhibits in the order they are attached to the body of the Agreement, with precedence of such exhibits given in the order in which they are attached to the Agreement;

2.1.5.3. Supplementary Conditions, if any, to the Contract Documents;

2.1.5.4. These General Conditions;

2.1.5.5. Specifications

2.1.5.6. Drawings; and

2.1.5.7. Notice to Proceed.

If any provision of the Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provisions of the Agreement govern, unless the other provision specifically refers to the provision it supersedes and replaces it in the Agreement or unless otherwise superseded by the order of precedence set forth above in this Article 1.1.5.

2.1.6. The Agreement and other Contract Documents are solely for the benefit of the Owner and the CMAR except to the extent expressly provided in the Agreement, represents the entire and integrated agreement between such Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

2.2. Relationship of Parties

The Owner and the CMAR agree to proceed with the Project based on mutual trust, good faith, and fair dealing.

2.2.1. The CMAR shall furnish preconstruction, permitting assistance, construction, administration, and management services and use the CMAR's reasonable efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Owner and CMAR shall endeavor to promote harmony and cooperation among all Project participants.

2.2.2. The CMAR represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.2.3. Neither the CMAR nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in the Agreement unless authorized in writing by the Owner's Representative.

2.2.4. The Owner's Representative shall possess full authority to give instructions from the Owner and shall be able to issue directions and Change Orders to the CMAR.

2.2.5. The CMAR Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The CMAR shall notify the Owner in writing of a change in the designation of the CMAR Representative. Upon such notice, the Owner will have fourteen Calendar Days to approve or reject the change in designation. Should the Owner reject the CMAR Representative, the CMAR and Owner shall meet within one (1) Business Day to decide on who will serve as the CMAR Representative.

2.2.6. The Owner and the CMAR shall perform their obligations with integrity, ensuring at a minimum that:

2.2.6.1. Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.2.6.2. The Owner and the CMAR warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers, and employees, Subconsultants, or Others from whom they may be liable, to secure preferential treatment.

2.2.6.3. The CMAR warrants that it will perform the Contract in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and Rules (Section 37), the Owner's Code of Conduct, Governmental Conduct Act Sections 10-16-1 through 10-16-18, NMSA 1978, the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, Sections 30-41-1 through 30-41-3 NMSA 1978, and any other applicable or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. The CMAR warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Contract.

2.2.6.4. The CMAR agrees to provide the Owner's Board with any records or information pertaining in any manner to this Contract, or both, whenever such records or information are within the CMAR'S custody, are germane to an investigation authorized by the Board, and are requested by

the Board. The CMAR further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. The CMAR agrees to require that all Subcontractors employed by the CMAR for services performed for this Contract shall agree to comply with the provisions of this Article. The CMAR and its Subcontractors shall not be compensated under this Contract for its time or any costs incurred in complying with this Article.

2.3. Engineer

The Owner, through its Engineer, shall provide all engineering and other design services necessary for the completion of the Work. The Owner shall obtain from the Engineer either a license for the CMAR and Subcontractors to use the design documents prepared by the Engineer or ownership of the copyrights for such design documents.

12 ARTICLE 2 — CMAR Preconstruction Phase and Construction Phase Responsibilities

12.1 General Responsibilities

12.1.1 The CMAR shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord and consistent with the Contract Documents as being necessary to produce the indicated results.

12.1.2 The CMAR shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures used, unless the Contract Documents give other specific instructions. In such case, the CMAR shall not be liable to the Owner for damages resulting from compliance with such instructions unless the CMAR recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures. The CMAR shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in Article 2.1.6 nor shall the CMAR be liable for professional services rendered by or design documents prepared by the Engineer or any of its consultants or subconsultants at any tier. The CMAR shall be entitled to rely upon the adequacy, accuracy, and completeness of all design, engineering, and other consulting services provided by the Engineer and its consultants and subconsultants at all tiers and/or other consultants retained directly or indirectly by the Owner. The CMAR shall have no liability to the Owner or any other Party for the failure of any Drawings, Specifications, or other design or engineering produced by Others to be adequate,

correct, complete, and free from defect for any purpose or to comply with Applicable Law, all of which shall remain the responsibility of the Engineer.

12.1.3 The CMAR shall perform Work only within locations allowed by the Contract Documents, applicable permits, and Applicable Law.

12.1.4 The CMAR and its Subcontractors shall review and compare each of the Contract Documents with the others and with information furnished or made available by Owner and shall, subject to limitations set forth in Article 2.1.2 hereof, promptly report in writing to Owner's Representative any errors, inconsistencies, or omissions it discovers in the Contract Documents or inconsistencies it discovers with Applicable Law observed by the CMAR or its Subcontractors. The CMAR and its Subcontractors shall take field measurements, verify field conditions, and compare with the Contract Documents with such field measurements and conditions before commencing any of the Work. The observations and measurements are for the purpose of facilitating coordination and construction by the CMAR and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, they are opportunities for the CMAR to identify any readily observable or potential errors, omissions, or inconsistencies in the Contract Documents. Readily observable errors, inconsistencies, or omissions discovered by the CMAR shall be promptly reported in writing to Owner's Representative. The CMAR maintains responsibility for losses, including the costs of correcting Defective Work involving an error, inconsistency, or omission by the CMAR and/or its Subcontractors which are caused by or are attributable to the CMAR, but the CMAR does not have responsibility for losses arising from design or engineering errors or omissions and it is recognized that the CMAR's review, observations, and measurements are made in the CMAR's capacity as a construction manager and not as a licensed design or engineering professional.

12.1.5 Worksite Visit. The CMAR acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work and, during the Preconstruction Phase, has participated in Owner/Engineer work sessions and provided input and feedback to the Owner and Engineer on the design and engineering of the Project, both from a constructability and a budgeting and cost-trending analysis standpoint. The CMAR will advise the Owner if it requires additional visits to increase its familiarity with the observable general and local conditions of the Worksite which may impact the Work. CMAR shall not be responsible for or required to conduct any subsurface investigation.

12.1.6 Professional Services. The CMAR may be required to procure professional services to carry out its responsibilities for construction means, methods, techniques, sequences, and procedures or as such services are specifically called

Commented [AM7]: Comment from Amelia states "I don't like this. The RFP Addendum 2 eliminated the category for utility verification in Phase I, based on current scope. If the scope changes or we discover there is a need to excavate (exterior repairs of below grade reservoir, valve replacement, etc) subsurface investigation will be required, especially in Phase 2."

for by the Contract Documents. The CMAR shall obtain these professional services and any design certifications required from licensed design professionals. All Drawings, Specifications, calculations, certifications, and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner, through the Engineer, shall indicate all required performance and design criteria. The CMAR shall not be responsible for the adequacy of such performance and design criteria. The CMAR shall not be required to provide such services in violation of Applicable Law in the jurisdiction where the Project is located. Should the CMAR refuse to provide services based on the inadequacy of design criteria or because of a violation of existing Applicable Law, the CMAR shall provide notice and an explanation to Owner within seven (7) Business Days of the CMAR becoming aware of the issue. The CMAR shall work with Owner to mitigate the issue.

12.1.7 Key Personnel for the Work.

12.1.7.1 CMAR shall employ and utilize the Key Personnel in the jobs and for the time periods specified in the Scope of Work.

12.1.7.2 Subject to Article 2.1.7.3, CMAR shall not replace any Key Person or Key Firm without the Owner's prior written approval.

12.1.7.3 If any Key Personnel resigns from CMAR's or Key Firm's employment, is unavailable due to leave of absence, death, injury, illness, maternity leave, disability, promotion, retirement, termination, replacement for-cause or is otherwise unavailable, replace such person with a person of at least equivalent experience, ability, and expertise, who is approved, in writing by the Owner (in its sole discretion) before such replacement.

12.2 Preconstruction Phase Services

The CMAR's Scope of Work responsibilities include the Preconstruction Phase Services defined and described in the Agreement. The CMAR shall perform such Preconstruction Phase Services at the time, in the manner, and for the Fee set forth in Article 2 of the Agreement. Unless otherwise mutually agreed in writing by the Owner and the CMAR, such Preconstruction Phase Services do not require or obligate the CMAR to generate or produce any design or engineering for the Project but will require the CMAR to participate in Owner/Engineer work sessions and provide input and feedback to the Owner and Engineer on the design and engineering of the Project from a constructability, budgeting, schedule, and cost-trending analysis standpoint. The CMAR, when providing input and feedback, shall

not be responsible or liable for any design or engineering related work or services. However, the CMAR shall be responsible for any temporary works or related construction engineering necessary to implement the construction of the Project.

12.3 Construction Phase Services

12.3.1 Commencement. Unless otherwise provided to the contrary elsewhere in this Agreement or the other Contract Documents, the CMAR's Construction Phase Services shall commence upon execution of a Phase II Construction Price Amendment for the Project or specific Bid Package or other portion of the Work.

12.3.2 Coordination. The CMAR shall supervise, coordinate, and direct the Work using the CMAR's ordinary skill and attention. Subject to Article 2.1.2, the CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work. The CMAR shall manage and administer all phases of construction activities to achieve the completion of all Work within the requirements of the Contract Documents. The CMAR shall coordinate the Work of its Subcontractors and Material Suppliers to optimize efficiency and minimize conflict and interference between the various Subcontractors on-site. It is recognized, however, that the CMAR is not acting in the capacity of a licensed design professional, and that the CMAR's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies in the design Drawings or plans created by the Engineer or to ascertain from the design Drawings or plans created by the Engineer compliance with Applicable Laws. The CMAR does not have an affirmative responsibility to detect errors or omissions by the Engineer or other consultants retained by Owner. The CMAR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

12.3.3 Cost Reporting. The CMAR shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The CMAR shall maintain a complete set of all books and records prepared or used by the CMAR with respect to the Project. The CMAR's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles, consistently applied. The Owner shall be afforded access to all the CMAR's records, books, correspondence, instructions, Drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The CMAR shall preserve all such records for a period of three years after the Final Payment in accordance with Article 8.9 hereof or longer where required by law.

12.3.4 Construction Personnel and Supervision

12.3.4.1 The CMAR shall provide competent supervision at the site for the performance of the Work at all times. Before commencing the Work, the CMAR shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the CMAR shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. The CMAR shall not replace the superintendent without providing forty-eight hours written notice to the Owner, except under extraordinary circumstances. The CMAR shall submit a resume and the qualifications of the proposed substitute superintendent along with the written notification and the Owner shall review and approve or deny the proposed substitute. The superintendent will be the CMAR'S representative at the Site and shall have authority to act on behalf of the CMAR. All communications given to superintendent shall be as binding as if given to the CMAR.

12.3.4.2 The CMAR shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the CMAR or any of its Subcontractors and Material Suppliers.

12.3.4.3 The CMAR shall permit only fit and ordinarily skilled persons to perform the Work. The CMAR shall enforce safety procedures, discipline, and good order among persons performing the Work. If the Owner reasonably determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, the CMAR shall immediately reassign the person on receipt of the Owner's written notice to do so.

12.3.5 Submittals

12.3.5.1 The CMAR shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The CMAR shall prepare and deliver its submittals to the Owner and Engineer in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the CMAR delivers its submittals to the Owner, the CMAR shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any CMAR submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation or substitution causes an impact to the Phase II

Construction Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the CMAR. If the Contract Documents do not contain submittal requirements pertaining to the Work, the CMAR agrees upon request to submit in a timely fashion to the Owner for review and approval any submittals, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner. Submittals should be made in groups of items which are related to facilitate cross-checking and coordination. Each submittal shall be accompanied by a cover page giving the Project name, supplier's name, and an itemized list of the submitted data.

12.3.5.2 The CMAR shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the CMAR from responsibility for Defective Work resulting from errors or omissions of any kind on the approved submittals.

12.3.5.3 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: Drawings, Specifications, addenda, and other Modifications, and required submittals including product data, samples, and shop drawings.

12.3.5.4 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the CMAR obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly by written approval by the Owner no later than seven (7) days following the Owner's receipt of a written request for approval thereof. If required, the CMAR will prepare a Change Order request within seven (7) days following approval by the Owner and, if applicable, provide for an adjustment in the Phase II Construction Price or Contract Time.

12.3.5.5 The CMAR shall prepare and submit to the Owner updated electronic data, in accordance with Article 3.8.1.

12.3.6 Cooperation with Work of Owners and Others

12.3.6.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, cleanup,

and safety which are substantively the same as the corresponding provisions of this Agreement.

12.3.6.2 If the Owner elects to perform work at the Worksite directly or by Others, the CMAR and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the CMAR and assist with the coordination of activities and the review of construction schedules and operations. The Phase II Construction Price or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The CMAR, Owner, and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

12.3.6.3 With regard to the work of the Owner and Others, the CMAR shall (a) proceed with the Work in a manner which does not hinder, delay, or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the CMAR's construction and operations with theirs as required by Article 2.3.6.2.

12.3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the CMAR shall visually examine such work performed by the Owner or Others and give the Owner prompt, written notification of any defects the CMAR discovers therein of their work which will prevent the proper execution of the Work. The CMAR's obligations in this Article 2.3.6.4 do not create a responsibility for the work of Others but are for the purpose of facilitating the Work. If the CMAR does not notify the Owner of ~~discovered~~ ~~patent~~ defects interfering with the performance of the Work, the CMAR acknowledges that to the CMAR's reasonable knowledge at the time, the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the CMAR of defects, the Owner shall promptly inform the CMAR what action, if any, the CMAR shall take regarding the defects.

12.3.7 Cutting, Fitting, and Patching

12.3.7.1 The CMAR shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others, if within the CMAR's Scope of Services.

12.3.7.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

12.3.8 Cleaning Up

12.3.8.1 The CMAR shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the CMAR shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The CMAR shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the CMAR shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris created by the CMAR and its Subcontractors.

12.3.8.2 If the CMAR fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of noncompliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the CMAR in the next payment period.

12.3.9 Access to Work. The CMAR shall facilitate the access of the Owner, its Engineer, and Others to Work in progress. The Owner, Engineer, and Others shall follow safety protocols in effect and in compliance with OSHA.

12.3.10 Materials Furnished by the Owner or Others

12.3.10.1 In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the CMAR to visually examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as ~~is standard in the industry to provide a satisfactory and proper installation~~. Loss or damage due to acts or omissions of the CMAR shall be the responsibility of the CMAR and may be deducted from any amounts due or to become due the CMAR. Any ~~defects discovered~~ in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the CMAR of defects, the Owner shall promptly inform the CMAR what action, if any, the CMAR shall take regarding the defects.

Commented [AM8]: Comment on Proposal "They should accept the change above in 2.3.6.4 as it is the same concept here."

12.3.11 Tests and Inspections

12.3.11.1 The CMAR shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other Work related to the Project. The CMAR shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Article 2.3.11.3 below or unless otherwise required by the Contract Documents, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the CMAR and promptly delivered to the Owner.

12.3.11.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the CMAR shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in Article 2.3.11.3.

12.3.11.3 If the procedures described in Articles 2.3.11.1 and 2.3.11.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the CMAR, the CMAR shall be responsible for costs of correction and retesting.

12.4 Warranty

12.4.1 The CMAR warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new and unused unless otherwise specified, of good quality, and in conformance with the Specifications set forth in the Contract Documents. The CMAR further warrants that the Work shall be free from defects in materials and workmanship not intrinsic in the design or materials required in the Contract Documents. The CMAR's warranty does not include remedies for defects or damages caused by others, normal wear and tear during normal usage, use, or operation for a purpose for which the Project was not intended, improper or insufficient maintenance, inadequate, incomplete, or defective design, modifications performed by the Owner or Others, or abuse. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND ARE NULL AND VOID. The CMAR's warranty pursuant to this Article 2.4.1 shall commence on the earlier of (a) the Date of Substantial Completion of the Work or the designated portion as agreed to by the

Owner and the CMAR, and (b) the date the Owner takes beneficial use of the Work or designated portion of the Work as agreed to by the Owner and the CMAR.

12.4.2 The CMAR shall use commercially reasonable efforts to obtain from its Subcontractors and Material Suppliers any special or extended warranties expressly required by the Contract Documents. The CMAR's liability for such warranties shall be limited to the one-year correction period referred to in Article 2.5. After that period, the CMAR shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors and Material Suppliers.

12.5 Correction of Defective Work

12.5.1 If prior to Substantial Completion and within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the CMAR in writing. Unless the Owner provides written acceptance of the condition, the CMAR shall promptly correct the Defective Work. If the Owner discovers a defect, the Owner shall notify the CMAR promptly after the date of discovery. Work that is found not to conform to the requirements of the Agreement prior to Substantial Completion but does not prevent achievement of Substantial Completion may be corrected prior to Final Completion.

12.5.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period for the Defective Work shall be extended by the time period between Substantial Completion and the actual performance of the later Work.

12.5.3 If the CMAR fails to correct Defective Work within a mutually agreed time after receipt of written notice from the Owner prior to Final Payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Article 10.2.3. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the CMAR. If payments then or thereafter due the CMAR are not sufficient to cover such amounts, the CMAR shall pay the difference to the Owner.

12.5.4 If after the one-year correction period but before the periods of limitations and repose applicable to the Work in the jurisdiction in which the Project is located have run the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the CMAR. If the CMAR elects to correct the Work, it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the Owner. The CMAR shall complete the correction of Work within a mutually agreed time frame. If the CMAR does not elect to correct the Work, the Owner may have the Work corrected by itself or

Others and charge the CMAR for the reasonable cost of the correction. The Owner shall provide the CMAR with an accounting of correction costs it incurs.

12.5.5 If the CMAR's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing building, the CMAR shall be responsible for the cost of correcting the destroyed or damaged property.

12.5.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the CMAR's other obligations under the Contract Documents.

12.5.7 Prior to Final Payment, at the Owner's option and with the CMAR's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases, the Phase II Construction Price may be equitably adjusted as agreed to by the Parties for any diminution in the value of the Project, if any, caused by such Defective Work.

12.6 Correction of Covered Work

12.6.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others and the CMAR shall be entitled to a Change Order adjusting the Contract Time and/or the Phase II Construction Price for any resulting delay or added cost. If the uncovered Work proves to be defective, the CMAR shall pay the costs of uncovering and replacement.

12.6.2 If a portion of the Work is covered, contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, the Owner, by written request, may require the CMAR to uncover the Work, at a mutually convenient time, for the Owner's observation. In this circumstance, the Work shall be replaced at the CMAR's expense and with no adjustment to the Contract Time.

12.6.3 The CMAR is required to correct in a timely fashion any Work rejected by the Owner which fails to comply with the Contract Documents prior to the commencement of the warranty period(s) or during the correction period(s) established under Article 2.5. The CMAR shall correct at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

12.7 Safety of Persons and Property

12.7.1 Safety Precautions and Programs. The CMAR shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Article 2.7 establishes the responsibility for safety between the Owner and CMAR, it does not relieve the Engineer or Subcontractors of their responsibility for the safety of persons or property in the performance of their Work, nor for compliance with the provisions of Applicable Laws.

12.7.2 Safety

12.7.2.1 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent injury, or loss to all employees on the Work and other persons who may be affected thereby.

12.7.2.2 The CMAR shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection of the property adjacent to the construction Work. The CMAR shall comply with 29 CFR Part 1926, Subpart P, Department of Labor Occupational Safety and Health Administration, Occupational Safety and Health Standards – Excavations, Final Rule, and all amendments thereto, whenever the CMAR is performing excavation activities.

12.7.2.3 Means of ingress and egress shall be provided for all persons living or working on streets in which Work is being done. All sidewalks, public walkways and drainage gutters/drainage ways shall be open, and fire hydrants and water system valves shall be left accessible for use at all times.

12.7.3 The CMAR shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

12.7.3.1 Its employees and other persons at the Worksite;

12.7.3.2 Materials and equipment stored at on-site or off-site locations for use in the Work; and

12.7.3.3 Property located at the Worksite and adjacent to Work areas, whether the property is part of the Work.

12.7.4 CMAR's Safety Representative. The CMAR shall designate an individual at the Worksite in the employ of the CMAR who shall act as the CMAR's authorized safety representative with a duty to prevent accidents in accordance with Article 2.7.2. The CMAR shall report immediately in writing all accidents and injuries occurring at the Worksite. When the CMAR is required to file an accident report with a public

authority, the CMAR shall furnish a copy of the report to the Owner concurrent with the report's distribution with the public authority.

12.7.5 The CMAR shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be the CMAR'S superintendent, unless otherwise designated in writing by the CMAR to the Owner.

12.7.6 The CMAR shall provide the Owner with copies of all notices required of the CMAR by Applicable Law. The CMAR's safety program shall comply with the requirements of Governmental Authorities having jurisdiction.

12.7.7 Damage or loss not insured under property insurance which may arise from the Work to the extent caused by negligent acts or omissions of the CMAR, or anyone for whose acts the CMAR may be liable, shall be promptly remedied by the CMAR. If the Owner deems any part of the Work or Worksite unsafe, and such safety concerns are due to the fault or neglect of the CMAR, its Subcontractors, or anyone else for whom such Parties are responsible, the Owner, without assuming responsibility for the CMAR's safety program, may require the CMAR to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the CMAR does not adopt corrective measures, the Owner may perform them and deduct their cost from the Phase II Construction Price. The CMAR agrees to make no claim for damages, or an increase in the Phase II Construction Price, or for a change in the Dates of Substantial or Final Completion based on the CMAR's compliance with the Owner's reasonable request.

12.7.8 The CMAR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or to protect them from injury, or loss.

12.7.9 Protection of Work

12.7.9.1 The CMAR shall be responsible for initiating, maintaining, and supervising protection of all materials and equipment to be incorporated into the Project, whether in storage on or off the Site, and finished Work that is complete in place. The CMAR shall take all reasonable necessary precautions to prevent damage, injury or loss said materials, equipment and Work and other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction that may be impacted by CMAR's operations.

12.7.9.2 The CMAR shall conduct its operations in a manner which will minimize interference with the normal use of property adjacent to the

construction Work and shall give owners of such property at least twenty-four (24) hours' notice of the commencement of work in the area abutting their property. The CMAR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction to protect property from damage, injury, or loss. CMAR shall notify owners of adjacent utilities at least 48 hours in advance when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in Article 2.7.9.1 caused, directly or indirectly, in whole or in part, by the CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the CMAR, except damage or loss attributable to the acts or omissions of Owner or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CMAR. The CMAR'S duties and responsibilities for the protection of the Work shall continue until such time as the Work is completed and accepted by the Owner.

12.7.9.3 The CMAR shall assume full responsibility for any damage (1) to the property and improvements thereon at the Project Site and (2) to other property and improvements thereon used or damaged by the CMAR in the performance of the Work including damages sustained by the owner or occupant of such land or areas contiguous thereto to the extent not required by or the work necessarily contemplated by the Contract documents. Should any claim be made against Owner by such other property owners or occupants because of CMAR's negligence in the performance of the Work, the CMAR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The CMAR shall, to the fullest extent permitted by laws and regulations, defend, indemnify and hold Owner harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys, and other professionals, and court and arbitration costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against Owner to the extent that the claims, damages, losses or expenses are caused by, or arise out of, the negligent acts or omissions of CMAR, its officers, agents, or employees. This Article shall also apply to claims asserted against Owner based on the CMAR'S alleged trespass on public or private property. CMAR's liability attorneys, consultant, and arbitration fees and/or court costs, shall only arise to the extent CMAR wrongfully denies a proper tender of defense.

Commented [AM9]: Amelia's comment states "I don't understand this language."

Commented [AM10]: Amelia's comment "Could a claim be made without negligence?"

12.7.9.4 The CMAR shall not trespass upon public or private property, and shall at all times take proper precautions to protect public and private property from damage.

12.7.9.5 Weather Conditions: In the event of temporary suspension of the Work or during inclement weather, the CMAR shall, and shall cause its Subcontractors to implement reasonable means and methods to protect carefully all of the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site, against damage, injury or loss from the weather. If, in the opinion of the Owner, any of the Work or materials or equipment to be incorporated therein shall have been damaged or injured or Owner has suffered any loss by reason of failure on the part of the CMAR or any of its Subcontractors so to reasonably protect the Work and materials and equipment to be incorporated therein, all such damage, injury or loss shall be promptly remedied at the expense of the CMAR. Until the Project is accepted by Owner, the CMAR shall be responsible for implementing reasonable means and methods in attempting to protecting completed Work, Work in progress, equipment, materials and property from storm water, wind, erosion, sediment, and related elements. All damage, injury or loss resulting from storm water, wind, erosion, sediment, or related elements shall be promptly corrected at the CMAR'S expense to the extent such damage is attributable to CMAR's failure to take reasonable steps to protect same.-

12.8 Emergencies

12.8.1 In an emergency, the CMAR shall act in a reasonable manner to prevent personal injury or property damage. If appropriate, an equitable adjustment in the Phase II Construction Price or Date of Substantial Completion or Date of Final Completion may be determined in a Change Order.

12.8.2 In emergencies affecting the safety of persons or the Work or property at the Site or adjacent thereto, the CMAR, without special instruction or authorization from the Owner, is obligated to reasonable means and methods to ~~act to~~ prevent threatened damage, injury, or loss. The CMAR shall give the Owner prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby; and a Change Order may thereupon be issued covering the changes and deviations involved. If the CMAR believes that additional work done in an emergency which arose from causes beyond its control entitles the CMAR to an increase in the contract price or an extension of the Contract Time, the CMAR may make a claim therefor.

12.9 Hazardous Materials

12.9.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup. The CMAR shall not be obligated to commence or continue Work until any unknown Hazardous Material discovered or encountered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. The Owner shall retain generator status of any preexisting hazardous materials contained on-site and shall sign manifests for removal of preexisting hazardous materials.

12.9.2 If after the commencement of the Work, unknown Hazardous Material is discovered or encountered at the Worksite, the CMAR shall be entitled to immediately stop Work in the affected area. The CMAR shall report the condition to the Owner, the Engineer, and, if required, the Governmental Authority with jurisdiction.

12.9.3 The CMAR shall not be required to perform any Work relating to or around Hazardous Material without written mutual agreement.

12.9.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner and shall be performed in a manner minimizing any adverse effects upon the Work. The CMAR shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the Governmental Authority with jurisdiction.

12.9.5 If the CMAR incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the CMAR ~~will~~may be entitled to an equitable adjustment in the Phase II Construction Price and in the Dates of Substantial and Final Completion.

12.9.6 To the extent not caused by the acts or omissions of the Owner, its Engineer or other consultants, the agents, officers, directors, and employees of any of them, or any person or entity in the chain of title to the real property comprising the Project or any portion thereof, whether as owner, tenant, guest, licensee, invitee, or otherwise (collectively, the "Owner Indemnitees"), the CMAR shall defend, indemnify and hold harmless the Owner Indemnitees from and against any and all direct or indirect claims, suits, damages, losses, costs, and expenses (including, but not limited to, attorneys' fees and costs, but only to the extent CMAR wrongfully

~~denies a proper tender of defense~~) incurred by any such Owner Indemnitees in connection with or arising out of or relating to any Hazardous Materials first introduced onto the Project site by the CMAR or its Subcontractors on or after the date of the Agreement; provided however, that in no event shall such indemnity and defense obligations apply to (a) any Hazardous Materials specified for the Work by the Owner, the Engineer, any consultants of such Parties or any other person or entity for whom the Owner is legally responsible, ~~or~~ (b) common cleaning solvents used by the CMAR in the performance of the Work, ~~(c) any Hazardous Materials that are attributable to the third parties not with in the control of CMAR.~~ To the fullest extent permitted by law, such indemnification shall survive the termination of this Agreement and/or the completion of the Work and the transactions contemplated herein.

12.9.7 Removal of Hazardous Materials

12.9.7.1 To the extent the Hazardous Materials not the subject of Article 2.9.7 above are identified in other applicable provisions above of this Article 2.9, the CMAR shall proceed with remediation and removal of such Hazardous Materials as agent for the Owner in accordance with Article 2.9.7.2 ~~at Owner's expense~~.

12.9.7.2 The Owner hereby appoints the CMAR as its agent to act in the Owner's name and on the Owner's behalf to negotiate, enter, and execute contracts with third parties to remove, transport, and/or dispose of Hazardous Materials. The CMAR's scope of authority as agent does not include the execution of any manifests or governmental documents related to the Hazardous Materials. All documents executed by the CMAR acting within the CMAR's scope of authority shall provide that the CMAR is acting solely as agent for the Owner. The CMAR shall maintain appropriate records of all acts undertaken as agent for the Owner and all such documents shall be available for audit by the Owner.

12.9.7.3 The authority of the CMAR to act as agent on behalf of the Owner shall terminate upon termination or assignment of the Construction Agreement.

12.10 Materials Brought to the Worksite

12.10.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the CMAR, Subcontractors, the Owner, or Others, shall be maintained at the Worksite by the CMAR and made available to the Owner, Subcontractors, and Others.

12.10.2 The CMAR shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the CMAR in accordance with the Contract Documents and used or consumed in the performance of the Work.

12.10.3 To the extent caused by the negligent acts or omissions of the CMAR, its agents, officers, directors, and employees, the CMAR shall defend, indemnify, and hold harmless the Owner, its agents, officers, directors, and employees, in accordance with Article 2.9.7 hereof, from and against claims, damages, losses, costs, and expenses, including, but not limited to, reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, but only to the extent CMAR wrongfully denies a proper tender of defense, in each case arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances.

Commented [AM11]: Underlined in Smithco's Exceptions

Commented [AM12]: Amelia's comment "is this being used correctly? I thought "wrongful denial of tender of defense" was for insurers"

12.10.4 Hazardous Materials. The CMAR shall, without additional expense to the Owner, be responsible for obtaining any necessary licenses and permits required by law or regulation, and comply with all federal, state, municipal law, code, ordinance and regulation applicable to the performance of the Work in connection with hazardous materials that are identified in the Contract documents. The CMAR shall be responsible for all damages to persons or property that occur as a result of the CMAR'S fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, and the public, and the property of others. The CMAR shall be responsible for all materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been specifically accepted by the Owner under the Contract.

12.11 Differing Site Conditions

~~12.11.1~~ If the CMAR encounters Differing Site Conditions, the CMAR shall stop Work and shall provide the Owner and the Engineer with written notice of its claim for Differing Site Conditions within the time period set forth in Article 11.1. Any change in the Phase II Construction Price, estimated Cost of the Work and/or CMAR's Fee (where applicable), Date of Substantial Completion, or Date of Final Completion and, if appropriate, the Compensation for Construction Phase Services because of the Differing Site Conditions shall be determined as provided in Article 11. ~~The CMAR shall only be entitled to pursue a claim for Differing Site Conditions if the Parties have not agreed, in writing, that Differing Site Conditions have occurred after the CMAR's submission of appropriate backup documentation.~~

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Commented [AM13]: Amelia's comment "This sentence seems erroneous as written, but may be worth keeping by eliminating the "not" from "...if the Parties have NOT agreed, in writing..." (Parties must agree in writing to Differing Site Conditions in order to receive payment)"

12.12 Permits And Taxes

12.12.1 The CMAR shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Article 3.6 hereof, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The CMAR shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

12.12.2 The CMAR shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the CMAR, including all gross receipts, sales, consumer, use and other similar taxes and assessments and levies required to be paid by the CMAR in accordance with the law of the place where the Work is to be performed. The CMAR shall use and require the use of non-taxable transaction certificates by Subcontractors and suppliers whenever allowed by law. In any event, the CMAR shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which the CMAR calculates its gross receipts taxes when billing the Owner. The Owner will not pay tax on non-taxable items.

12.12.3 The Phase II Construction Price shall be adjusted for additional costs, subject to approval by the Owner, resulting from Applicable Laws enacted after the date of this Agreement, including increased taxes.

12.13 Confidentiality

12.13.1 The CMAR shall treat as confidential and shall not use for its own benefit nor disclose to third persons, except as is necessary for the performance of the Work, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the CMAR or which the CMAR may acquire in connection with the Work. The Owner shall treat as confidential information all of the CMAR's estimating systems and historical and parameter cost data and identified related proprietary information that may be disclosed to the Owner in connection with the performance of this Agreement. If a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) ("Act") is received, however, which request encompasses such materials, the CMAR will be notified. The Owner will fulfill the request submitted in accordance with the Act.

12.13.2 The Owner and the CMAR shall each specify those items to be treated as confidential and shall mark them as "Confidential." The provisions of this Article 2.13.1 shall survive the termination or completion of this Agreement and the transactions contemplated hereby.

13 ARTICLE 3 — Owner Responsibilities

13.1 Adequate Funding for Project

At the CMAR's request following execution of the Phase II Construction Price Amendment and prior to the Owner's issuance of a Notice to Proceed with the Construction Phase Services, the Owner shall promptly furnish reasonable evidence satisfactory to the CMAR that the Owner has adequate funds available and committed to fulfill all of the Owner's payment obligations under the Contract Documents. If the Owner fails to furnish such financial information in a timely manner, the CMAR may stop Work under Article 10.4 of the General Conditions or exercise any other right permitted under the Contract Documents. Following the Owner's issuance of the Phase II Notice to Proceed, so long as the Owner satisfies its payment obligations under the Agreement and other Contract Documents, the Owner shall not be required to furnish any further financial evidence of its ability to satisfy its payment obligations under the Contract Documents.

13.2 Owner's Representative

The Owner will identify the Owner's Representative, or any other authorized person or entity as defined in Article 1.1.41 of the Agreement, to act on behalf of the Owner. The Owner may change the Owner's Representative upon written notice to the CMAR.

The Owner's authorized representative shall be fully acquainted with the Project and shall have the authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the CMAR in writing.

13.3 Information And Services

Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work. The Owner shall establish and update an overall budget for the Project in accordance with Article 2.1 hereof, based on consultation with the CMAR and Engineer, which shall include Contingencies for changes in the Work and other costs which are the responsibility of the Owner.

13.4 Worksite Information

Except to the extent that the CMAR knows of any inaccuracy, the CMAR is entitled to rely on the following Project information furnished by the Owner pursuant to this Article 3.4. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Project information, the Owner shall provide such information to the CMAR at the Owner's expense and with reasonable promptness so as not to delay the Schedule:

13.4.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or Drawings depicting existing conditions, subsurface conditions and environmental studies, reports, and investigations.

13.4.2 Permanent Survey Monuments. All permanent survey monuments will be shown on the construction plans. The CMAR shall notify the Engineer not less than seven (7) days prior to starting work in order that Engineer may take necessary measures to ensure the preservation of survey monuments. The CMAR shall not disturb permanent survey monuments without the consent of the Engineer and shall notify the Engineer and bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only by a Surveyor licensed to practice in the State of New Mexico, under supervision of the Engineer. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, the CMAR shall, at its own expense, adjust the monument cover to the new grade unless otherwise specified.

13.4.3 Tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law.

13.4.4 Any other information or services requested in writing by the CMAR which are relevant to the CMAR's performance of the Work and under the Owner's control. The information required by this Article 3.4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the CMAR in laying out the Work.

13.4.5 All licenses and other rights to use of the Drawings, Specifications, and any other intellectual property necessary or required for the CMAR's performance of the Work as well as any other rights to use of any other documents, materials, and/or information generated or produced by the Engineer or its consultants at any level in connection with the design, engineering, or programming for the Project.

13.5 Engineer

Unless otherwise expressly provided to the contrary in this Agreement, the Owner shall be responsible for retaining and paying the Engineer and all other professional design and engineering consultants required for construction of the Project or portions thereof.

13.6 Building Permit, Fees, And Approvals

The CMAR shall obtain and pay for all construction permits and licenses and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. The Owner shall assist the CMAR, when necessary, in obtaining such permits and licenses. The CMAR shall also pay all public utility charges.

Assuming the CMAR has performed all necessary and reasonable actions to obtain permits, the CMAR shall not be liable for any delays related to obtaining permits and may be entitled to any cost or Schedule impacts related thereto so long as not caused by any acts, errors, or omissions of the CMAR.

13.7 Mechanics and Construction Lien Information

Where allowed by law, within thirty (30) days after receiving the CMAR's written request, the Owner shall provide the CMAR with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

13.8 Contract Documents

Unless otherwise specified, Owner shall provide electronic or hard copies of the Contract Documents to the CMAR as may be agreed to by the Owner and CMAR and without cost to the CMAR.

13.8.1 Electronic Documents. If the Owner requires that the Owner, Engineer, and CMAR exchange documents and data in electronic or digital form, prior to any such exchange the Owner, Engineer, and CMAR shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software, and services; (4) acceptable formats, transmission methods, and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall bear their own costs as identified in the protocol. In the absence of a written protocol, use of

documents and data in electronic or digital form shall be at the sole risk of the recipient.

- 13.9 If the CMAR incurs additional costs or is delayed due to such loss or damage, the CMAR ~~will may~~ be entitled to an equitable adjustment in the Phase II Construction Price estimated Cost of the Work, CMAR's Fee, Date of Substantial Completion, or Date of Final Completion to the extent of the impact.

13.10 Submittals

13.10.1 CMAR shall submit to Engineer for review all Shop Drawings and samples in accordance with the accepted schedule of Shop Drawing submittals.

13.10.2 All data shall be submitted to the Engineer within thirty (30) days after receipt of the Notice to Proceed in strict accordance with the following procedures:

13.10.2.1 Data shall be provided in not more than four (4) separate submittals. Submittals should be made in groups of items which are related to facilitate cross-checking and coordination.

13.10.2.2 Each submittal shall be accompanied by a letter giving CMAR'S name, the Project name and an itemized list of the submitted data.

13.10.3 Should the above procedure not be followed, CMAR may not make any claim for loss of time or money as a result of delay in receiving approved submittal data. Materials fabricated or delivered to the Site before Engineer's approval of Shop Drawings has been received by the CMAR shall be subject to rejection by Engineer.

13.10.4 CMAR shall also submit to Engineer for review and approval, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of CMAR, identified clearly as to material, manufacturer, pertinent catalog numbers and the use for which intended.

13.10.5 At the time of each submission, CMAR shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

13.10.6 The Engineer will review and approve with reasonable promptness Shop Drawings and samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) nor to safety precautions or

programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CMAR shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved.

13.10.7 CMAR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by Engineer on previous submissions. CMAR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to OWNER and Engineer that CMAR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so; and that CMAR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents, and/or agrees to pay all costs of re-designing or modifying other items to accommodate the item(s) submitted.

13.10.8 Where a Shop Drawing or sample submission is required by the Contract, no related Work shall be commenced until the submission has been approved by Engineer. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by CMAR at the Site and shall be available to Engineer.

13.10.9 Engineer's review and approval of Shop Drawings or samples shall not relieve the CMAR from responsibility for any deviations from the requirements of the Contract Documents unless the CMAR has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written approval to the specific deviation. Any approval by Engineer shall not relieve the CMAR from responsibility for errors or omissions in the Shop Drawings. If deviations from the requirements of the Contract Documents are discovered either prior to or after Shop Drawing submittals are processed by Engineer, the Project Specifications and Drawings shall govern the Work.

13.10.10 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay and shall cause the Engineer to respond to such submittals and to either approve or reject the same no later than fourteen (14) days following Engineer's receipt of same, unless an earlier or later response deadline is provided elsewhere in the Contract Documents.

13.11 Access

The Owner shall furnish, as indicated in the Contract Documents and not later than the date when needed by the CMAR, the lands upon which the Work is to be done, right-of-way for access thereto, and such other lands which are designated for the

use of the CMAR. The Owner shall provide the CMAR and its Subcontractors and Materials Suppliers at all tiers with appropriate physical and legal access to the Project Site and other areas necessary for the proper and timely performance and completion of the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise specified in the Contract Documents. If the CMAR believes that any delay in Owner's furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefor as provided in Article 5.3. The CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

14 ARTICLE 4 — Subcontracts

14.1 Subcontractors

The Work not performed by the CMAR with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a Lump-Sum cost basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

14.2 Award of Subcontracts and Other Contracts for Portions of the Work

14.2.1 As soon after the execution of this Agreement as possible, the CMAR shall provide the Owner and, if directed, the Engineer with a written list of the proposed Subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or Material Supplier, the Owner shall notify the CMAR in writing. Failure to promptly object shall constitute acceptance. Subcontractors shall be secured by the CMAR in accordance with the Subcontractor Procurement Plan.

14.2.2 The CMAR shall furnish a complete list of subcontractor changes, each and every time a proposed change is to be requested by the CMAR. Any substitutions of a subcontractor will comply with the New Mexico Subcontractor Fair Practices Act (13-4-31 NMSA 1978) to the extent that the Subcontractors Fair Practices Act is applicable. The CMAR shall not substitute a subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

14.2.3 If the Owner has reasonably and promptly objected as provided in Article 4.2.1, the CMAR shall not contract with the proposed Subcontractor or Material Supplier, and the CMAR shall propose another acceptable to the Owner. If the substituted Subcontractor or Material Supplier is more or less expensive or use of such Party will result in a change in the Contract Time, the Owner shall execute an appropriate Change Order that shall reflect any increase or decrease in the Phase II

Construction Price or Dates of Substantial or Final Completion because of the substitution.

The CMAR agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' and Material Suppliers' portions of the Work. CMAR shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contract with the CMAR, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any monies due any Subcontractor or other person or organization, except as may otherwise be required by law.

14.2.4 The CMAR shall be responsible for ensuring Subcontractor compliance with Applicable Law, including applicable registration and reporting requirements.

14.3 Contingent Assignment of Subcontracts

14.3.1 If this Agreement is terminated for cause in accordance with Article 10.1 hereof, each subcontract agreement shall be assigned by the CMAR to the Owner, subject to the prior rights of any surety, provided that the Owner accepts such assignment after termination by notifying the Subcontractor or Material Supplier and CMAR in writing, and assumes all rights and obligations of the CMAR pursuant to each subcontract agreement.

14.3.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive days following termination, the Subcontractor's compensation may be equitably adjusted because of the suspension.

15 ARTICLE 5 — Time

15.1 Performance of the Work

15.1.1 Date of Commencement. Unless otherwise provided to the contrary in the Agreement or other Contract Documents, the Date of Commencement of the Preconstruction Phase Services is the date of issuance of a Phase I Notice to Proceed for the same in accordance with Article 2.1 of the Agreement. Unless

otherwise provided to the contrary in the Agreement, the Date of Commencement of the Construction Phase Services is the date construction of those services commence following issuance of a Phase I Notice to Proceed by the Owner for some or all the Work covered by such Construction Phase Services as described in a Phase II Construction Price Amendment executed by the Owner or the CMAR for the same. The Work shall proceed in general accordance with the Schedule of Work as such Schedule may be amended from time to time, subject to other provisions of this Agreement. The Schedule is subject to allowable adjustments in the Contract Time as permitted herein or in the other Contract Documents.

15.1.2 Substantial / Final Completion. Unless the Parties agree or otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established pursuant to the Phase II Construction Price Amendment, subject to adjustments as provided for in the Contract Documents.

15.1.3 Time limits stated above are of critical importance to this Agreement.

15.1.4 The CMAR shall not knowingly commence the Work before the effective date of the bonds and insurances to be provided by the CMAR and Owner as required by the Contract Documents.

15.2 Schedule of the Work

15.2.1 The CMAR shall submit an initial and updated Project Construction Schedule to the Owner in the form and within the time limits acceptable to the Owner. The Owner will determine the acceptability of the initial and updated Project Construction Schedule within a reasonable period of time **but no later than 10 Business Days**. If the Owner deems the Project Construction Schedule unacceptable, it shall specify in writing to the CMAR the basis for its objection.

15.2.2 The initial and updated Project Construction Schedule shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by the Owner to be practical.

15.2.3 The CMAR shall use the Critical Path Method ("CPM" or "Critical Path") to schedule and manage the Work. The CMAR shall create and manage the Schedule. If the CMAR does not have staff capable of preparing and managing CPM Schedules, the CMAR shall obtain such qualified personnel on a subcontract basis for supporting the Contract Documents.

15.2.4 All CPM scheduling shall be performed using CPM precedence diagramming method (PDM) scheduling software such as Primavera Project Planner or an Owner or Engineer required platform with import capabilities commercially available and reasonably acceptable to the CMAR. The CMAR shall submit all Schedules and

associated reports to the Owner in digital (pdf) and native file or another specified format commercially available in the marketplace to allow the Owner and Engineer to complete the analysis and review of the Schedule.

15.3 Delays and Extensions of Time

15.3.1 If the CMAR is delayed at any time in the commencement or progress of the Work by Excusable Delay (as hereinafter defined), then, ~~upon agreement of the Parties:~~

Commented [AM14]: Amelia's comment "I would keep this (changes should be agreed on by both parties)"

15.3.1.1 The Contract Time shall be extended by Change Order for a reasonable time based on the impact of such delay or concurrent delays to the Critical Path of the Project Schedule.

15.3.1.2 Provided the CMAR has mitigated the effects of such delay ~~when reasonably possible~~ (such as, by way of example and not of limitation, through rescheduling, resequencing, or other measures), the Phase II Construction Price shall be adjusted to the extent reasonably necessary to compensate the CMAR for any increases in the Cost of the Work due to additional time to which the CMAR is entitled under this Article 5.3.

Any adjustments made pursuant to Articles 5.3.1.1 or 5.3.1.2 shall be subject to limitations set forth in Article 7 hereof of these General Conditions and the provisions of Articles 5.6 and 5.7 of these General Conditions. The CMAR shall not be entitled to an adjustment in the Phase II Construction Price or the Contract Time for CMAR Delays.

15.3.1.3 Damages: The CMAR shall not be entitled to damages or increases in the CMAR's compensation of any nature whatsoever, including but not limited to damages for such matters as extended home or other office overhead, delay and impact claims or ripple effect, interruption of schedules, additional Contract Time, and increases in costs of material, labor, supplies, equipment, or other items necessary to perform the Work of the Project, based upon: (1) the extension of time to execute the Agreement or to commence the Contract Time; ~~(2) the refusal of Owner to agree to extensions of the Contract Time or the time to extend execution of the Agreement;~~ or ~~(23) the Owner's rescission of the Notice of Award before CMAR has mobilized.~~ This Article shall govern both in the event the Agreement is executed and in the event the Agreement is not executed.

Commented [AM15]: Amelia's comment "...refusal of Owner to agree to extensions of Contract Time..." - I could see WUA refusing to extend the contract time for a reservoir due to operational restrictions (can't have out of service in high demand period). Would this force overtime work & greater contractor cost? Or coating/temperature issues - refusal to extend schedule would lead to heating requirements. Would Contractor eat these added costs or would WUA pay?"

All time limits stated in the Contract Documents are of the essence of the Contract. ~~The conditions of this Article shall not exclude recovery for~~

Commented [AM16]: Comment states "No- we have LD's"

~~damages (including compensation for additional professional services) for delay by either party.~~

Commented [AM17]: Amelia's comment "Does having Liquidated Damages eliminate the possibility of recovering damages for delay? Is it possible to have LDs and separate delay damages?"

CMAR is entitled to complete the Work early, but unless otherwise provided in the Contract Documents, shall not be entitled to additional compensation therefor. If an incentive is provided for early completion, the CMAR shall not be entitled to such incentive if prevented from achieving early completion as a result of delays caused by contractors, individuals or entities outside the control of Owner.

15.4 Other Terms Defined

15.4.1 For purposes of the Contract Documents, the following terms shall have the meanings indicated for each:

15.4.1.1 "CMAR Delay" means each day of delay to the completion of the Work to the extent such delay was caused by and/or within the control of the CMAR, and (a) actually causes a delay in the Critical Path of such Work, and (b) is not caused by an Excusable Delay, Force Majeure, or Owner Delay. Delays attributable to and within the control of the CMAR, its Subcontractors of all tiers, its Material Suppliers, ~~Architect, Engineer, Consultant,~~ or other Party for whom the CMAR is responsible shall be deemed to be CMAR Delay.

Commented [AM18]: Amelia's comment "I would keep this?"

15.4.1.2 "Excusable Delay" means any act, omission, condition, event, or circumstance beyond the CMAR's reasonable control and due to no fault of the CMAR including, but not limited to, the Owner's suspension of the Work without cause or the CMAR's suspension of the Work due to nonpayment, Owner Delay, delays or impacts caused by or attributable to a third party, delay caused by or resulting from Differing Site Conditions, or a Force Majeure Delay.

15.4.1.3 "Force Majeure" means any ~~conditions, occurrences,~~ or acts of God, and not within the reasonable control of the CMAR, not constituting Owner Delay, ~~not delay~~ caused by Differing Site Conditions, or CMAR Delay, which impacts the Work or prevents or delays the CMAR from performing its obligations under the Contract Documents, including without limitation any one or more of the following:

Commented [AM19]: Amelia's comment "Leave as is? - original language eliminates "Differing Site Conditions" from the definition of "Force Majeure". Change seems grammatically incorrect."

15.4.1.3.1 Damage or destruction by fire or casualty.

15.4.1.3.2 ~~Unusually~~ Severe weather including lightning, tornado, earthquake, flood, windstorm, named weather event, named storm, wind, natural disasters.

15.4.1.3.3 Pandemic, epidemic, quarantine, declaration of public health emergency, and/or governmental orders issued in connection with such public health emergencies.

15.4.1.3.4 Strike or other labor dispute not specifically directed at the CMAR or any person or entity for whom the CMAR is responsible under the Contract Documents.

15.4.1.3.5 Nationwide or global unavailability or shortage of materials or equipment resulting in Critical Path delay. To the extent that any alleged delay relates to nationwide or global unavailability or shortage of materials or equipment, the CMAR shall be required to provide documented proof to the Owner that the CMAR did not reasonably anticipate such unavailability as of the Effective Date (as defined in the Phase II Construction Price Amendment) of the Phase II Construction Price Amendment and made diligent and timely efforts to obtain (buy out) such materials or equipment as a condition precedent to any extension of the Contract Time or increase of the Phase II Construction Price under this Article.

15.4.1.3.6 Unavailability of utilities (not caused in whole or in part as a result of fault on the part of the Owner or the CMAR).

15.4.1.3.7 Riots, insurrections, acts of a public enemy, acts of domestic and/or foreign terrorism, or vandalism.

15.4.1.3.8 Bomb scares or similar third-party threats or disruptions.

15.4.1.3.9 Moratoriums or other unusual or unforeseeable delays in the issuance of any required approvals from any Governmental Authorities or utilities.

15.4.1.3.10 Delays caused by actions or inactions of Governmental Authorities (not caused in whole or in part as a result of fault on the part of the Owner or the CMAR) including, but not limited to, enactment or revision of Applicable Laws or official interpretations subsequent to the execution of the Agreement.

For the avoidance of doubt, the Owner's financial insolvency or inability to perform its financial obligations under the Agreement and the other Contract Documents shall not constitute an event of Force Majeure.

15.4.1.4 "Owner Delay" means a cost impact or each day of delay that actually impacts the completion of the Work and is caused by any one or

more of the following actions or omissions of the Owner (or any tenant of the Owner) at the Project related to:

15.4.1.4.1 Any Change in the Work initiated by the Owner.

15.4.1.4.2 The Owner's failure to timely approve or disapprove any item for which Owner approval is required under the Contract Documents except to the extent that the Owner's failure is deemed to mean approval pursuant to the terms of the Agreement and except to the extent that the Owner cures such failure within seven (7) Business Days after receipt of written notice from the CMAR of such failure.

15.4.1.4.3 Any failure of the Owner to (a) comply with the CMAR's reasonable requirements relative to access to areas of the Work reasonably necessary for the performance of Work, including, without limitation, the hoist, freight elevators, and/or defined path of travel established with respect to the Work; (b) comply with the CMAR's safety rules; or (c) comply with all requirements applicable to the Owner's separate work for the Project undertaken by the Owner or its separate Contractors and Subcontractors at any tier in each case to the extent any such failure is not cured within five (5) Business Days after written notice is given by the CMAR to the Owner and only to the extent any such failure actually impacts the CMAR's already scheduled Work.

15.4.1.4.4 Failure by the Owner to comply with its obligations under this Agreement.

15.4.1.4.5 Any defects, delay, or impacts from the Owner's separate work for the Project undertaken or failed to be undertaken by the Owner or its separate Contractors and Subcontractors at any tier, or which delays the Work or the issuance of a certificate of occupancy or another applicable certificate of completion for the Work by any governmental entity having jurisdiction over the Project or the Work, in each case to the extent not cured within five (5) Business Days after written notice is given by the CMAR to the Owner.

~~15.4.1.4.5~~ 15.4.1.4.6 Any defects or inaccuracies in any of the Contract documents or other information provided by the Owner, Engineer, or anyone else they are responsible for.

~~15.4.1.4.6~~ 15.4.1.4.7 Any other event or circumstance caused by or attributable to the Owner to the extent such delay was caused by

Commented [AM20]: Amelia's comment "I think this is already covered by the original language in 5.4.1.4.6"

and/or within the control of the Owner and actually causes a delay in the Critical Path of such Work.

15.5 Claims / Modifications for Excusable Delays

If any delay to the Work is caused by Excusable Delay, any adjustments to time or Phase II Construction Price shall be made in accordance with Article 5.3.

15.6 Construction General Conditions Costs

In the event of an Excusable Delay pursuant to which the CMAR, subject to consultation with and approval of the Owner, is entitled to an adjustment in the Contract Time in accordance with Article 5.3.1 hereof but not otherwise, the CMAR ~~may, subject to consultation with and approval of the Owner, will,~~ be entitled to an equitable adjustment of the Phase II Construction General Conditions Costs, as negotiated between the Parties. The CMAR shall, in the event of an occurrence likely to cause Excusable Delay, cooperate in good faith with the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

Commented [AM21]: Amelia's comment "Leave as is?"

15.7 Monitoring Progress and Costs

Following acceptance by the Owner of the Phase II Construction Price, the CMAR and the Owner shall establish a process for monitoring costs against the Phase II Construction Price and actual progress against the Schedule of Work. The CMAR shall provide written reports to the Owner at monthly intervals on the status of the Work, showing variances between costs and the Phase II Construction Price and actual progress as compared to the Project Construction Schedule, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

15.8 Owner Approval

Notwithstanding anything contained herein or in the other Contract Documents to the contrary, any decision by the Owner to approve (or disapprove) any requested adjustments in the Contract Time and/or the Phase II Construction Price (including any increase in the Construction General Conditions Costs) resulting from an Excusable Delay shall be made by the Owner in its sole but good faith discretion. Any failure by the Parties to reach an agreement hereunder shall not prejudice the CMAR's entitlement to price and Schedule relief otherwise provided and may constitute a Claim for purposes of the dispute-related provisions in this Agreement.

16 ARTICLE 6 — Compensation

16.1 CMAR's Compensation for Preconstruction Phase Services

The Owner shall compensate the CMAR for the performance of the CMAR's Preconstruction Phase Services in accordance with Article 6.1.1 of the Agreement.

16.2 CMAR Compensation for Early Work(s) Package(s)

Any Early Works compensation will be agreed to by the Parties pursuant to a separate written amendment to the Agreement.

16.3 CMAR's Compensation for Construction Phase Services

The Owner shall compensate the CMAR for Work performed and described in a Phase II Construction Price Amendment on the basis of either a Lump Sum Phase II Construction Price or Guaranteed Maximum Price, in each case as set forth in such Phase II Construction Price Amendment.

16.4 Contingency and Allowances

Contingency and/or Allowances, if any, and the use thereof, shall be as set forth in, and subject to the terms, covenants, and conditions of the Phase II Construction Price Amendment executed in connection therewith.

17 ARTICLE 7 — Changes

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, Owner Change Directive, and/or Field Order. Additional Work performed without authorization ~~of a Change Order~~ will not entitle the CMAR to an increase in the contract price or an extension of the Contract Time, except in the case of an emergency as provided herein.

17.1 Change Order

17.1.1 The CMAR may request, or the Owner may order, changes in the Work or the timing or sequencing of the Work that impacts the Phase II Construction Price, where applicable the estimated Cost of the Work and CMAR's Fee, the Date of Substantial Completion, and/or the Date of Final Completion. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this Article 7.

17.1.2 The Phase II Construction Price will be adjusted ~~only~~ for changes, Owner Delays or Excusable Delay in accordance with and subject to the terms, conditions, and limitations set forth in Article 5.3 hereof.

17.1.3 If a Change Order results in a change in the contract price, it will be the CMAR's responsibility to so notify the surety, and the amount of each applicable bond shall be adjusted accordingly. The CMAR shall furnish proof of such adjustment to Owner upon request.

17.2 Owner Change Directives and Field Orders

17.2.1 The Owner may issue a written Owner Change Directive directing a change in the Work prior to reaching agreement with the CMAR on the adjustment, if any, in the Phase II Construction Price or the Date of Substantial Completion or Date of Final Completion.

17.2.2 The Owner and the CMAR shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Phase II Construction Price or the Contract Time arising out of Owner Change Directives. If the Owner and the CMAR are unable to reach agreement within thirty (30) Days, the issue shall be elevated to the CMAR's management and the Owner's Representative for a determination. As the Work associated with the Owner Change Directive is performed, the CMAR shall submit its costs for such Work with its Application for Payment and the CMAR shall be paid for the Work performed in accordance with the Phase II Construction Price Amendment. The Owner shall prepare an Owner Change Directive, utilizing the Owner's available funds, for any undisputed portion of the costs. Contingency funds may only be used for Owner Change Directives upon written agreement of the Parties.

17.2.3 When the Owner and the CMAR agree upon the adjustments in the Phase II Construction Price, the Date of Substantial Completion, and/or Date of Final Completion for a change in the Work directed by an Owner Change Directive, such agreement shall be the subject of an appropriate Change Order.

17.2.4 The Owner may authorize Field Orders. Such Field Orders will be binding on the Owner and on the CMAR, which shall perform the Work involved promptly. If the CMAR believes that a Field Order justifies an adjustment in the Phase II Construction Price or Contract Times or both, then the CMAR shall submit a Change Order Proposal.

17.3 Determination of Cost

17.3.1 An increase or decrease in the Phase II Construction Price established in a Phase II Construction Price Amendment (whether based on a GMP or Lump Sum Phase II Construction Price) or changes to the Project Construction Schedule or the Schedule/Contract Time resulting from a change in the Work that affect the Phase II Construction Price shall, in each case, be determined by one or more of the following methods:

17.3.1.1 Unit prices set forth in this Agreement or as subsequently agreed.

17.3.1.2 A mutually accepted, itemized Lump Sum, based on the Cost of the Work definition appearing in the Phase II Construction Price Amendment.

17.3.1.3 Cost of Work (as defined in the Phase II Construction Price Amendment) calculated on a basis agreed upon by the Owner and the CMAR, plus CMAR's Fee.

17.3.1.4 If an increase or decrease cannot be agreed to as set forth in Articles 7.3.1.1 through 7.3.1.3 above, and the Owner issues an Owner Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. Where applicable, if there is a net increase or decrease in the GMP, the CMAR's Fee shall be adjusted accordingly. The CMAR shall maintain a documented, itemized accounting evidencing the expenses and savings.

17.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the CMAR, such unit prices may be equitably adjusted.

17.3.3 If the Owner and the CMAR disagree as to whether work required by the Owner is within the Scope of the Work, the CMAR shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. Any such disagreement shall be resolved in accordance with Article 11.

18 ARTICLE 8 — Payment

18.1 Schedule of Values

Concurrently with the CMAR's preparation and delivery to the Owner of any cost model or progressive cost model as required for the Phase I Preconstruction Services Scope of Work through and including the date on which a Phase II Construction Price Amendment for any portion of the Work is executed by the CMAR, the CMAR shall prepare and submit to the Owner and, if directed, the Engineer, a Phase II Schedule of Values apportioned to the various divisions or phases of the Work in increasing level of detail. At the time a Phase II Construction Price Amendment is executed for the Work or any portion thereof, each line item

contained in the Phase II Schedule of Values shall be assigned a value such that the total of all items shall equal the Phase II Construction Price for such Work or portion thereof.

18.2 Progress Payments for Preconstruction Phase Services

Progress Payment for Preconstruction Phase Services shall be made in accordance with Article 6.1 of the Agreement.

18.3 Progress Payments for Construction Phase Services

Applications for Payment for Construction Phase Services shall be submitted by the CMAR to the Owner and the same paid, in each case in accordance with and subject to the terms and provisions of this Article 8, the Phase II Construction Price Amendment, and other applicable provisions of the Agreement and other Contract Documents.

18.3.1 Applications. The CMAR shall submit to the Owner and, if directed, its Engineer a monthly application for payment for Construction Phase Services no later than the 25th day of the calendar month for the preceding thirty (30) days; the CMAR's applications for payment shall be itemized and supported by the Phase II Schedule of Values and any other substantiating data as required by these General Conditions and the other Contract Documents. Payment applications shall include payment requests on account of properly authorized Change Orders or Owner Change Directives. The Owner shall pay amounts not in dispute and otherwise due no later than thirty (30) days after the CMAR has submitted a complete and accurate payment application. The Owner may deduct from any progress payment amounts as may be retained pursuant to Article 8.3.3 below, as well as amounts in dispute.

18.3.2 Lien Waivers and Liens

18.3.2.1 Partial Lien Waivers and Affidavits. If requested by the Owner, as a prerequisite for payment, but subject to the CMAR's receipt of payment, the CMAR shall provide partial conditional payment lien waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the Work completed during the period covered by the current application for payment and partial unconditional payment lien waivers from the CMAR and all Subcontractors and Material Suppliers paid from the previous month's application payment. In no event shall the CMAR be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment nor shall the CMAR be required to execute or deliver any lien waiver for the Work not covered by such lien waiver or in an amount more than what it has been paid.

18.3.2.2 Responsibility for Liens. If the Owner has made payments in the time required by this Article 8 and is otherwise not in breach of its obligations, the CMAR shall, within thirty (30) days after written notice of filing, cause the removal or bonding over of any liens filed against the premises or public improvement fund by any Party or Parties performing labor or services or supplying materials in connection with the Work by, among other things, securing a bond around the lien. If the CMAR fails to take such action on a lien, the Owner may cause the lien, after thirty (30) days written notice, to be removed at the CMAR's expense, including bond costs and reasonable attorneys' fees. This Article shall not apply if there is a dispute pursuant to Article 11 relating to the subject matter of the lien.

18.3.3 Retainage. Retainage is prohibited and shall not be withheld.

18.3.4 Stored Materials and Equipment. Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site, including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the CMAR of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

18.4 Adjustment of CMAR's Payment Application

The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the CMAR is responsible therefor under the Agreement:

18.4.1 The CMAR's failure to perform the Work as required by the Contract Documents.

18.4.2 Loss or damage arising out of or relating to this Agreement and caused by the CMAR to the Owner or Others to whom the Owner may be liable.

18.4.3 The CMAR's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner.

18.4.4 Defective Work not corrected in a timely fashion.

18.4.5 Reasonable evidence of unexcused delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion.

18.4.6 Reasonable evidence demonstrating that the unpaid balance of the Phase II Construction Price is insufficient to fund the cost to complete the Work.

18.4.7 Third-party claims involving the CMAR or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the CMAR furnishes the Owner with a defense, adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

Commented [AM22]: Amelia's comment "What is the definition of defense in this context?"

18.4.8 The CMAR's failure to submit progress schedules.

18.4.9 The CMAR's failure to maintain record information or As-Built Drawings.

18.4.10 The CMAR's failure to submit payrolls for employees and Subcontractors in compliance with State of New Mexico, Department of Work Force Solutions requirements.

18.4.11 The Owner has been required to correct Defective Work or complete the Work.

No later than twenty (20) days after receipt of an application for payment, the Owner shall give written notice to the CMAR, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the CMAR in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

Undisputed portions of any Application for Payment shall be promptly paid by the Owner in accordance with the terms of the Agreement, these General Conditions, and other applicable Contract Documents.

18.5 Acceptance of Work

Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

18.6 Payment Delay

If for any reason, not the fault of the CMAR, the CMAR does not receive a progress payment from the Owner in accordance with the Agreement and Phase II Construction Price Amendment, the CMAR, upon giving the Owner seven (7) days

~~such~~ written notice, ~~if any, as specified in the Phase II Construction Price Amendment~~, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the CMAR has been received, including interest from the date payment was due in accordance with the Agreement and Phase II Construction Price Amendment. The Phase II Construction Price and Dates of Substantial or Final Completion ~~may will~~ be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and startup.

18.7 Substantial Completion

18.7.1 The CMAR shall notify the Owner and, if directed, its Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the CMAR. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Engineer, shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The CMAR shall promptly complete all undisputed items on the list.

18.7.2 When Substantial Completion of the Work or a designated portion is achieved, the CMAR shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion. After delivery of the certificate of Substantial Completion and up through the time the Owner accepts the CMAR's Application for Final Payment, the CMAR shall continue to be responsible for security, maintenance, heat, utilities, damage to the Work, and Commercial General, Owner's and Contractor's Protective, and Workers' Compensation insurances. The Certificate of Substantial Completion shall be submitted by the CMAR to the Owner and, if directed, to its Engineer for the Owner's written acceptance of responsibilities assigned in the Certificate.

18.7.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the earlier of (a) the date of Substantial Completion of the Work or a designated portion, and (b) the date the Owner takes beneficial use of the Work or a designated portion of the Work.

18.7.4 The OWNER shall have the right to exclude the CMAR from the Site after the date of Substantial Completion, but Owner shall allow the CMAR reasonable access to complete or correct items on the punch list .

18.8 Partial Occupancy or Beneficial Use

18.8.1 The Owner may at any time request the CMAR in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. The Owner may occupy, or use completed or partially completed portions of the Work, beneficially when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The CMAR shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy. The CMAR shall be entitled to a Change Order if the Owner's partial use or occupancy of completed or partially completed portions of the Work adversely impacts completion of other portions of the Work through no fault of the CMAR.

18.8.2 After delivery of the tentative certificate of Substantial Completion for part of the Work and up through the time the Owner accepts the CMAR's Application for Final Payment and recommends the Application for Final Payment to the Owner for that part of the Work, the CMAR shall continue to be responsible for security, maintenance, heat, utilities, damage to the Work, and Commercial General, Owner's and Contractor's Protective, and Workers' Compensation insurances for that part of the Work.

18.9 Final Completion and Final Payment

18.9.1 Upon notification from the CMAR that the Work has reached Final Completion and is ready for final inspection and acceptance, the Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine if the Work has reached Final Completion and is acceptable under the Contract Documents. The Engineer will make a final inspection with Owner and the CMAR, and will notify the CMAR in writing of all particulars in which this inspection reveals that the Project is incomplete or defective. The CMAR shall immediately take such measures as are necessary to remedy such deficiencies.

18.9.2 When the Work has reached Final Completion, the CMAR shall prepare for the Owner's acceptance a final application for payment stating that to the best of the CMAR's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

18.9.3 Final Payment shall be due on the CMAR's submission of the following to the Owner:

18.9.3.1 An affidavit declaring any indebtedness connected with the Work, e.g., payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of Final Payment, so as not to encumber the Owner's property.

18.9.3.2 As-built Drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents.

18.9.3.3 Release or waivers of any liens, conditioned on Final Payment being received.

18.9.3.4 Consent of any surety, if applicable.

18.9.3.5 Any outstanding known and unreported accidents or injuries experienced by the CMAR or its Subcontractors at the Worksite.

18.9.3.6 If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, The CMAR may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any lien.

18.9.4 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the CMAR, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the CMAR shall submit to the Owner and, if directed, the Engineer the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this Article 8.9.

18.9.5 Claims ~~by either party~~ not reserved in writing with the making of Final Payment shall be waived except for claims relating to liens or similar encumbrances, warranties, and Defective Work.

18.9.6 Acceptance of Final Payment. Unless ~~either party the CMAR~~ provides written identification of unsettled claims ~~in connection~~ with an application for Final Payment, its acceptance of Final Payment constitutes a waiver of such payment claims ~~except as noted in Article 8.9.5.~~

18.10 Late Payment

Payments due but unpaid shall bear interest until paid at the rate set forth in Article 9 of the Phase II Construction Price Amendment.

18.11 Change Of Payment

Upon execution of the Agreement, the CMAR shall provide the Owner with written payment instructions and all necessary forms required by the Owner to effectuate payments to the CMAR (Payment Information).

19 ARTICLE 9 — Indemnity, Insurance, Waivers, and Bonds

19.1 Indemnity

19.1.1 To the fullest extent permitted by law, the CMAR shall indemnify, defend, and hold harmless the Owner and its directors, officers, employees, successors, and assigns from and against any and all third-party claims, legal actions, causes of action, proceedings, suits, judgments, liens, and levies, including reasonable attorneys' fees and disbursements (but only to the extent CMAR wrongfully denies a proper tender of defense) but only to the extent for bodily injury or death of any person(s) and damages to tangible property (other than the Work itself), to the extent caused by the CMAR (or by its Subcontractor or Sub-subcontractors, regardless of tier) and arising from the intentional, willful or negligent acts or omissions of the CMAR, any Subcontractor at any tier, or any person or entity for whom such Parties are legally responsible in the performance of the Work.

19.1.2 The CMAR's indemnity obligations under Article 9.1 shall not apply (a) to the extent of the negligence or willful or intentional misconduct of the Owner, its officers, agents, employees, successors, or assigns.

19.1.3 In all claims against the Owner Indemnitees by any employee of the CMAR, anyone directly or indirectly employed by the CMAR or anyone for whose acts the CMAR may be liable, the indemnification obligation set forth in Article 9.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CMAR under workers' compensation acts, disability benefit acts, or other employee benefit acts.

19.1.4 Notwithstanding any provision or term to the contrary herein, under no circumstances shall either Party be liable to the other for any consequential, incidental, special, or punitive damages and as provided in Article 9 of the Agreement.

19.2 CMAR's Insurance

19.2.1 Insurance and Bond requirements are provided in Attachment 16 of the Phase II Construction Price Amendment.

19.3 Property Insurance

Builder's Risk Insurance shall be obtained and maintained for the Project by Owner upon and subject to the terms and conditions of the Phase II Construction Price Amendment.

19.4 Risk Of Loss

Risk of loss or damage to the Work shall be upon the CMAR until Final Completion but only to the extent such loss or damage is paid by Builder's Risk Insurance specified in the Phase II Construction Price Amendment, unless otherwise agreed to by the Parties.

19.5 Adjustment of Loss

A loss insured under the Builder's Risk Insurance Policy required pursuant to the Phase II Construction Price Amendment to the Agreement shall be adjusted by the Party obtaining such Builder's Risk Insurance and made payable to such Party for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause, the Phase II Construction Price Amendment, and Article 9.6 hereof. The CMAR shall pay Subcontractors their just shares of insurance proceeds received by the CMAR, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

19.6 Insurance Payouts

If required in writing by a Party in interest, the Party obtaining such Builder's Risk Insurance shall, upon occurrence of an insured loss, give bond for proper performance of such Party's duties. The cost of required bonds shall be charged against proceeds received by each Party. Such Party shall deposit in a separate account proceeds so received, which such Party shall distribute in accordance with such agreement as the Parties in interest may reach, or in accordance with Article 11 of these General Conditions. The CMAR shall not be required to repair or replace lost or damaged Work until a mutually acceptable Change Order, in accordance with Article 7, is executed and funds are available to pay for such loss or damage.

19.7 Bonds

Payment and performance bonds or other forms of substitute security, if any, shall be required as set forth in the Phase II Construction Price Amendment, Attachment 16, Insurance and Bond Requirements.

19.8 Royalties, Patents, and Copyrights

The CMAR shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems not otherwise required by the Contract documents and selected by the CMAR and incorporated in the Work. The CMAR shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

20 ARTICLE 10 — Suspension, Notice to Cure, and Termination of the Agreement

- 20.1 The Owner may suspend Work at any time and, without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days in the aggregate by notice in writing to the CMAR and the Engineer, which shall fix the date on which Work shall resume. The CMAR shall resume the Work on the date so fixed.

The CMAR will be allowed an increase in the Phase II Construction Price or an extension of the Contract Time, or both, for delayed or added costs, directly attributable to any suspension (but not lost profits) if the CMAR makes a claim therefor as provided in Articles 5 and 7.

If the CMAR fails to correct Defective Work as required by Articles 2.5 and 2.6 herein or fails to perform the Work in accordance with the Contract Documents, the Owner or Owner's Representative may direct the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated by the CMAR. The CMAR shall not be entitled to any adjustment of Contract Time or Phase II Construction Price because of any such order. The Owner and Owner's Representative have no duty or responsibility to the CMAR or any other Party to exercise the right to stop the Work.

20.2 Owner Termination

20.2.1 The Owner may terminate Agreement upon the occurrence of any one or more of the following events:

20.2.1.1 If sufficient appropriations are not made by the Owner's Board, this Contract may be terminated at the end of Owner's then current fiscal year upon written notice given by Owner to the CMAR. Such event shall not constitute an event of default and all payment obligations of Owner and all of its interest in this Contract will cease upon the date of termination. Owner's determination regarding appropriations shall be accepted by the CMAR and shall be final.

20.2.1.2 If the CMAR commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if the CMAR takes any equivalent or similar action by filing a petition or otherwise under any federal or state law in effect at such time relating to the bankruptcy or insolvency.

20.2.1.3 If the CMAR is adjudged a bankrupt or insolvent.

20.2.1.4 If the CMAR makes a general assignment for the benefit of creditors.

20.2.1.5 If a trustee or receiver is appointed for the CMAR or for any of the CMAR's property.

20.2.1.6 If the CMAR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws.

20.2.1.7 If the CMAR fails to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress Schedule established and adjusted in accordance with pursuant to Article 5 of the Agreement and Article 5 hereof.

20.2.1.8 If the CMAR, without justification, repeatedly fails to make timely payments to Subcontractors or Material Suppliers for labor, materials, or equipment.

20.2.1.9 If the CMAR repeatedly disregards laws or regulations of any public body having jurisdiction.

20.2.1.10 If the CMAR is found to have engaged or is engaging in Unfair Business Practices as set forth in Section 2-376 of the Procurement Ordinance.

20.2.1.11 Upon Debarment of the CMAR by Owner or an agency of the federal government or the State of New Mexico or a local public body of the State.

20.2.2 The Owner may, without prejudice to any other right or remedy, serve written notice upon the CMAR and the CMAR's surety of the Owner's intention to terminate the Agreement for any breach set forth in this Article 10.2. Said notice to contain the reasons for such intention to terminate the Agreement and provide that unless within seven (7) days after the service of such notice CMAR shall commence and continue necessary cure efforts, all such violations have been corrected and remedied, the Contract Documents shall cease and terminate, and the CMAR shall be excluded from the site. In such case, the CMAR shall not be entitled to receive any further payment until the Work is finished by Others.

20.2.2.1 The foregoing notwithstanding, if the nature of the alleged reason for termination is not capable of being corrected or remedied within seven (7) days, such correction or remedy shall commence and be completed with reasonable diligence and in no event later than thirty (30) days following the occurrence of such default.

20.2.3 In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the CMAR, and the surety shall have the right to take over and perform the Contract Documents, provided, however, that if the surety, within 15 days after the serving upon it of a notice of termination, does not give the Owner written notice of their intention to take over and perform the Contract Documents, or does not commence performance thereof within thirty (30) days from the date of serving said notice, Owner may take possession of the Work incorporate in the Work all materials and equipment stored at the site or for which Owner has paid the CMAR but which are stored elsewhere that were intended to be incorporated into the Work, and finish the Work as Owner may deem expedient for the account and at the expense of the CMAR. The CMAR's surety shall be liable to the Owner for any excess costs or other damage occasioned the Owner thereby. If the unpaid Balance of the Phase II Construction Price exceeds the direct and indirect costs of completing the Work, including but not limited to, compensation for additional professional services and all costs generated to insure or bond the Work of substituted Contractors or Subcontractors utilized to complete the Work, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR shall pay the difference to the Owner promptly upon demand; on failure of the CMAR to pay, the surety shall pay on demand by Owner. Any portion of such difference not paid by the CMAR or surety within thirty (30) days following the mailing of a demand for such costs by the Owner shall earn interest rate authorized by state law. Such costs incurred by the Owner shall be verified by the Owner's Representative and incorporated in a Change Order, but in finishing the Work, the Owner shall have the obligation to mitigate its damages, but not be required to obtain the lowest figure for the Work performed. Any dispute under this Article shall be addressed in accordance with Article 11 in this Agreement.

20.2.4 Where the CMAR's services have been so terminated by the Owner, the termination shall not affect any rights of the Owner against the CMAR then existing or which may thereafter accrue. Any retention or payment of monies due the CMAR by the Owner will not release the CMAR from liability.

20.2.5 The Owner may terminate the Agreement for convenience in accordance with Article 10.3 hereof. In the event of such termination for convenience, the CMAR shall be compensated for the portion of the CMAR's Preconstruction or

Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed.

- 20.3 Upon seven (7) days written notice to the CMAR, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Agreement for convenience. In such case, the CMAR shall be paid for (without duplication of any items):

20.3.1 Work executed in accordance with the Contract Documents prior to the effective date of termination, including CMAR Fee ~~and for~~ Construction General Conditions Costs on such Work, as applicable.

20.3.2 Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for Construction General Conditions Costs and CMAR Fee thereon.

20.3.3 Other reasonable expenses directly attributable to termination, including demobilization costs, cancellation charges and ~~attorney's and professional~~ fees, and costs incurred to prepare a termination for convenience cost proposal and cancellation costs related to material and equipment subcontracts.

20.3.4 The amount of profit, if any, on such uncompleted Work agreed to by the Owner and the CMAR as set forth in the Phase II Construction Price Amendment for Construction Phase Services. Unless mutually agreed to by the Owner and the CMAR in a written amendment to the Agreement, no profit on uncompleted Work for Preconstruction Phase Services shall be due or payable for any termination for convenience exercised by the Owner or the CMAR during the Preconstruction Phase Services in accordance with the Contract Documents.

20.4 CMAR Termination

If, through no act or fault of the CMAR, the Work is suspended for a period of more than ninety (90) days in the aggregate by the Owner or under an order of court or other public authority, or the Owner fails to pay within thirty (30) days to the CMAR any undisputed amounts due, or the Owner breaches any other material provision of the Agreement and the same is not cured within thirty (30) days following the Owner's receipt of written notice thereof from the CMAR, then the CMAR may, upon seven (7) days written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus reasonable termination expenses, ~~including those in Article 10.3~~, provided the Owner does not remedy such suspension or failure within that time. In addition, and in lieu of terminating the Contract Documents, if the Owner has failed to make any

payment as aforesaid of undisputed amounts, the CMAR may, upon seven (7) days written notice to the Owner, stop the Work until payment of all amounts then due.

20.4.1 In addition to, and without limiting the generality of the CMAR's suspension and termination rights under Article 10.4, if the Owner directs the CMAR or its Subcontractors or Material Suppliers at any tier to perform Work that the CMAR informs the Owner is illegal or involves an imminent danger to human health, the environment, or the Owner's property or other nearby or adjoining properties, the CMAR shall have the right to notify the Owner, in writing, of such illegality or danger and the Owner shall meet with the CMAR within seven (7) days following the Owner's receipt of such notice to review and discuss such concerns and work cooperatively and in good faith with the CMAR to resolve them. Any resolution shall include an appropriate adjustment in the Phase II Construction Price and Project Construction Schedule to account for the added cost and time to the CMAR in objecting to and attempting to resolve such concerns. If the Owner fails to respond to the CMAR within seven (7) days following the CMAR's notification of such concerns, or the Parties, after meeting to discuss the same are unable, within an additional thirty (30) days to resolve the concerns to the CMAR's reasonable, good faith satisfaction, the CMAR shall thereafter have the right to terminate this Agreement for convenience and without cause upon an additional seven (7) days' written notice to the Owner. In such event, the Owner shall pay the CMAR the same amounts owing to the CMAR for an Owner's termination for convenience pursuant to Article 10.3.

21 ARTICLE 11 — Claims, Claims Procedures, Dispute Mitigation, and Resolution

21.1 Claims for Additional Cost or Time

Except as provided in any applicable Phase II Construction Price Amendment, for any claim for an increase in the Phase II Construction Price or the change in or extension to the Date of Substantial Completion or Date of Final Completion (each a "Claim"), the CMAR shall give the Owner written notice of the Claim within seven (7) days after the CMAR has become aware of the occurrence giving rise to the Claim. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Phase II Construction Price or the Date of Substantial Completion or Date of Final Completion resulting from such Claim shall be authorized by Change Order or a ruling obtained in the dispute resolution procedures.

21.1.1 Claims Procedures

Submission of a Claim, in ~~full~~ conformance with all requirements of this Article, and rejection of all or part of said Claim by the Owner, is a condition precedent to any

action by the CMAR against the Owner, including, but not limited to, the filing of a lawsuit, request for mediation, or demand for arbitration.

21.1.2 Notice of Claim

21.1.2.1 If the CMAR disagrees with the decision in, or in any case where the CMAR deems additional compensation or a time extension to the Contract Time is due the CMAR for work or materials not covered in the Contract Documents or which the Owner has not recognized as extra work, the CMAR shall notify the Owner, in writing, of its intention to make a Claim.

21.1.2.2 Written notice shall use the words "Notice of Potential Claim."

21.1.2.2.1 Such Notice of Potential Claim shall state the circumstances and the reasons for the Claim but need not state the amount.

21.1.2.2.2 A Notice of Potential Claim and all notices and other communications required or permitted under this Agreement or the other Contract Documents shall be in writing and delivered by hand delivery, certified first class mail return receipt requested, or reputable overnight courier to:

If to: Owner ABCWUA
 ATTN: CANDIDA KELCOURSE
 PO BOX 568, ALBUQUERQUE, NM 87103

If to: CMAR: SMITHCO CONSTRUCTION, INC.
 ATTN: TWISTER SMITH OR BRETT SMITH
 PO BOX 45, CABALLO, NM 87931

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21.1.2.3 Claims pertaining to decisions or such other determinations by the Owner relating to any Claim from the CMAR shall be communicated by the CMAR with the Owner in writing within seven (7) days following receipt of such decision.

21.1.2.4 All other Claims by the CMAR shall be filed in writing within seven (7) days after the event or occurrence giving rise to the Claim.

21.1.2.5 Additionally, no Claim for additional compensation or extension of time for a delay will be considered unless the provisions for Delays and Time Extensions are complied with and such failure prejudices Owner.

21.1.2.6 Unless expressly permitted in the Phase II Construction Price Amendment or other Contract Documents, no Claim for additional compensation for Work performed filed by the CMAR after the date of Final Payment will be considered.

21.1.3 Records of Extra Work

21.1.3.1 In proceeding under a Claim for extra Work, the CMAR shall keep accurate records in such a manner as to provide a clear distinction between the direct costs of extra Work paid and the costs of other operations to the extent feasible.

21.1.3.2 Daily extra work reports shall:

21.1.3.2.1 Be signed by the CMAR or the CMAR Representative.

21.1.3.2.2 Itemize the materials used and state the direct cost of labor and the charges for equipment rental, whether furnished by the CMAR, Subcontractor, or any specialized forces.

21.1.3.2.3 Provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

21.1.3.2.4 Substantiate material charges with attached valid copies of vendor's invoices and, if not available, the invoices shall be submitted within thirty (30) days after the date of delivery of the material or within thirty (30) days after the acceptance of the Contract Documents, whichever occurs first.

21.1.3.3 Such information shall be submitted to the Owner monthly. The Owner shall review, disapprove, and request adjustments, or agree upon and sign daily extra work reports upon receipt from the CMAR. The CMAR and the Owner shall agree on the contents of the extra work reports daily.

21.1.3.3.1 The Owner will compare the Owner's records with the completed daily extra work reports furnished by the CMAR and make any necessary adjustments.

21.1.3.3.2 When these daily extra work reports are agreed upon and signed by both Parties, the reports shall become the basis of payment for the Work performed but shall not preclude subsequent adjustment based on a later audit by the Owner.

21.1.3.4 The CMAR's and Subcontractor's records pertaining to the Project shall be open to inspection or audit by representatives of the Owner,

during the life of the Agreement, and for a period of three (3) years after the date of acceptance thereof, and the CMAR and all Subcontractors shall retain those records for that period. Such audit shall not include the CMAR's proprietary information, including, but not limited to, the CMAR's formula or other data or communications used in calculating pricing.

21.1.3.4.1 Where payment for materials or labor is based on Work performed by Subcontractors and other forces not employees of the CMAR, the CMAR shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of the Owner on the same terms and conditions as the cost records of the CMAR.

21.1.3.4.2 If an audit is to be commenced more than thirty (30) days after the acceptance date of the Agreement, the CMAR will be given a reasonable notice of the time when the audit is to begin.

21.1.3.5 The CMAR and Subcontractors shall keep full and complete records of the costs and additional time incurred for any Work for which a Claim for additional compensation is made.

21.1.3.5.1 The Owner Representative or any designated Claim investigator or auditor shall have access to those records and any other records as may be required by the Owner Representative to determine the facts or contentions involved in the Claims.

21.1.3.6 The Owner, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to the CMAR and Subcontractors' books, documents, and accounting records, including, but not limited to, bid worksheets, bids, Subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including, but not limited to, correspondence between the CMAR and its sureties and Subcontractors/Vendors, project files, scheduling information, and other records of the CMAR and Subcontractors directly or indirectly pertinent to the Work, original as well as change and Claimed extra Work, to verify and evaluate the accuracy of cost and pricing data submitted with any Change Order, prospective or completed, or any Claim for which additional compensation has been requested or Claim has been tendered.

21.1.3.6.1 Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at the Owner's cost.

21.1.3.7 In case the Claim is found to be just, it shall be allowed and paid for as provided by the Contract Documents.

21.2 Dispute Resolution

21.2.1 The Direct Discussions. If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement or the Project, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within thirty (30) Calendar Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within fifteen (15) Calendar Days to endeavor to reach resolution. If the dispute remains unresolved after sixty (60) days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

21.2.2 Mediation. Unless otherwise provided to the contrary in the Phase II Construction Price Amendment, Claims and other disputes or matters in controversy arising out of or related to the Agreement or Project that are not resolved pursuant to other provisions of this Article 11 shall be mediated prior to recourse to litigation or other binding dispute resolution proceeding. Such mediation shall, unless the Parties mutually agree otherwise, be conducted by a mediator mutually agreeable to the Parties in the city or town nearest where the Project is located in accordance with the American Arbitration Association Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation or other binding dispute resolution proceedings, and, in such event, mediation shall proceed at an appropriate time mutually agreed upon by the Parties or as directed by the court. The mediator shall be agreed to by the mediating Parties; in the absence of an agreement, the Parties shall each submit one name from the mediators listed by the American Arbitration Association in the locality in which the Project is located or other agreed-upon services. Such mediation shall be held for a period not to exceed one (1) day unless otherwise agreed in writing by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Neither Party shall be deemed the prevailing Party and each Party shall pay its own attorneys' fees and costs and one-half of the mediator's fees and costs. Disputes that are not resolved through mediation in accordance with this

Article 11.2.2 shall be resolved in the manner selected by the Parties in Article 11.2.3 below.

21.2.3 Dispute Resolution. If the matter remains unresolved after submission of the matter to direct management discussions or mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

21.2.3.1 By litigation. Jurisdiction and Venue. The parties hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of New Mexico and to the jurisdiction of the United States District Court for the District of New Mexico for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.

Commented [AM23]: Comment states "Arbitration would be best"

21.2.4 Survival. The dispute resolution provisions of the Agreement shall survive the completion of the Work and/or the expiration or termination of the Contract Documents.

21.2.5 Choice of Law. The Parties agree that disputes will be governed by the laws of the State of New Mexico.

21.2.6 Limitations of Liability. Any claim of tort liability against the Owner is subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended. Except as expressly provide by the New Mexico Tort Claims Act, the Owner does not waive its sovereign immunity or any defense or limitation of liability provided by applicable law. No provision of this Agreement shall be construed to modify, abrogate, or waive any provision of the New Mexico Tort Claims Act. None of the provisions contained within this Agreement are intended to create in the public or any member thereof a third-party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit or any claim whatsoever, pursuant to the provisions of this Agreement.

21.3 Multiparty Proceeding

The Parties agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

21.4 Lien Rights

Nothing in this Article 11 or other applicable provisions of the Contract Documents shall limit any rights or remedies not expressly waived by the CMAR which the CMAR may have under Applicable Law.

22 ARTICLE 12 — Miscellaneous Provisions

22.1 Assignment

Neither the Owner nor the CMAR shall assign its interest in the Agreement or the other Contract Documents without the written consent of the other except as to the assignment of proceeds. The terms and conditions of the Agreement and the other Contract Documents shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to the Agreement or the other Contract Documents shall assign the Agreement without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the CMAR than the Agreement. In the event of such assignment, the CMAR shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents and the CMAR shall not be obligated to perform for such wholly owned subsidiary or lender unless the CMAR is fully paid for its Work under the Agreement in accordance with the terms and provision thereof. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

22.2 Merger

This Agreement constitutes the entire agreement Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

22.3 Severability

If any part, term or provision of this Agreement is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Agreement, and the remainder of this Agreement will remain in full force and effect unless its essential purpose is frustrated by such severance.

FY26 CMAR Reservoir Rehab Program

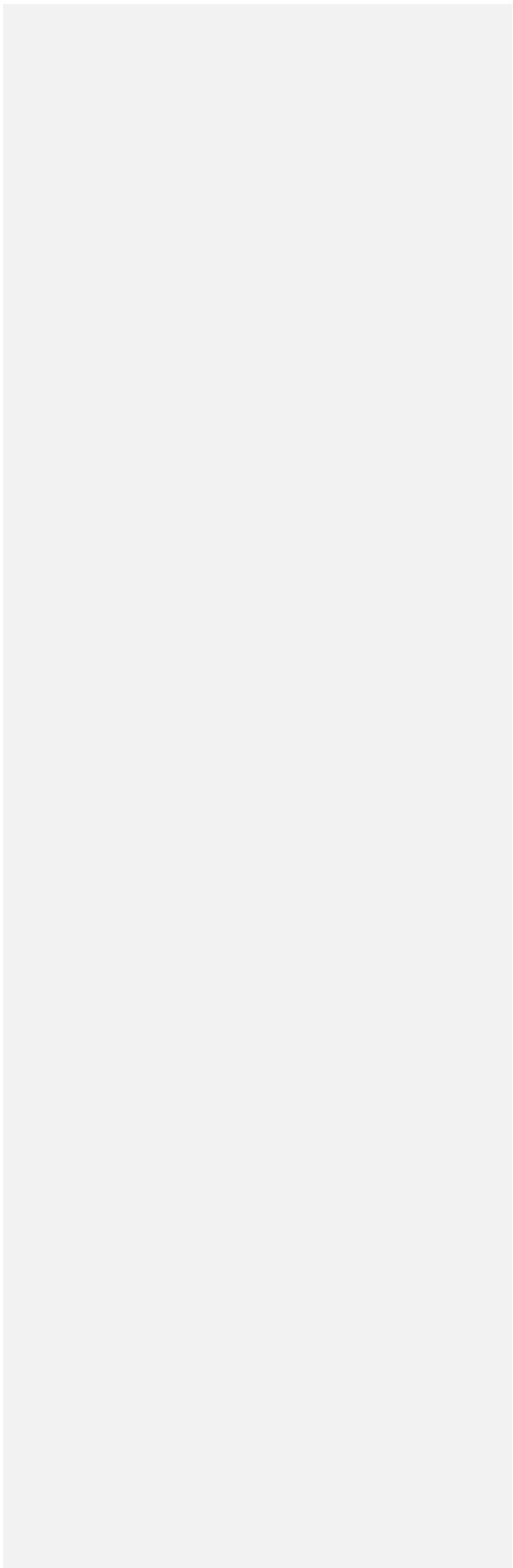


EXHIBIT B – PHASE I PRECONSTRUCTION SERVICES SCOPE OF WORK

FY26 CMAR RESERVOIR REHAB PROGRAM



Albuquerque Bernalillo County
Water Utility Authority

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Exhibit B
Phase I Preconstruction Services Scope of Work
FY26 CMAR Reservoir Rehab Program

The Albuquerque Bernalillo County Water Utility Authority (Owner) selected the construction manager at-risk (CMAR) collaborative delivery method to create a cohesive team that includes the Owner, the Engineer, and CMAR to work seamlessly to successfully design and construct the Project. The project delivery will be executed in two phases: Phase I Preconstruction Services, requirements addressed herein, and Phase II Construction Services, requirements to be finalized and executed by Phase II Construction Price Amendment with the final design documents and negotiated/accepted construction Guaranteed Maximum Price (GMP) as part of the Phase I Preconstruction Services.

This Preconstruction Services Scope of Work will serve as the basis of negotiation for the contract amount for Preconstruction Services (Preconstruction Phase Services fees). This scope is based on the following assumptions:

- The CMAR is provided reservoir record drawings and inspection reports on or about dates described in Request for Qualifications as may be modified in the Request for Proposals.
- Unless Owner indicates otherwise, GMP Proposal development shall be based on 90% design.
- The performance period for the Preconstruction Services Phase is expected to span 18 months starting with the Notice to Proceed for Preconstruction Services Phase (Phase I NTP) through completion of GMP negotiation and execution of the Phase II Construction Services Amendment.

Tasks to be performed during Preconstruction Services Phase are organized into the following six major tasks:

- Task 1. Project Management and Coordination
- Task 2. Meetings
- Task 3. Site Investigations
- Task 4. Design Support
- Task 5. Phase II Construction Price Proposal

Specific details and deliverables for each task and associated subtasks are established on the following pages. Changes or modifications to the scope of services and associated deliverables identified in these tasks shall be amended according to the provisions contained within the Agreement.

ARTICLE 1 — Phase I Preconstruction Services

2.4. Approach and Commencement

The Preconstruction Phase Services involve a coordinated approach to enhance constructability reviews and cost estimating, increase efficiency in project schedule and sequencing, streamline overall project execution, and maintain quality and cost control throughout the process. Preconstruction Phase Services shall commence no later than 10 days following the Owner's issuance of a Phase I NTP in substantially the form of **Exhibit C** to the Agreement. For performance of the Preconstruction Phase Services, CMAR shall be paid the Preconstruction Phase Services fees in the amount and in the manner set forth in Article 6.1 of the Agreement. The CMAR shall, as part of the Preconstruction Phase Services, provide an evaluation of the Owner's Program, conduct constructability reviews of the design, perform field investigations, prepare value engineering proposals, develop a baseline construction schedule and execution plan, and develop construction cost estimates throughout the design at agreed-upon milestones, each in terms of the other, and as established in this **Exhibit B**.

2.5. Roles

2.5.1. Owner: The Owner will approve design and construction plans; manage Contracts; provide project funding; approve scope, cost, and schedule changes; and coordinate with Owner operations.

2.5.2. Engineer: The Engineer, with oversight and input from the Owner, will develop a design (the "Design") for the Project that will establish performance requirements, design and engineering requirements, project goals and objectives, functional programming, and other specific elements to be incorporated into the Project. The initial Project technical performance requirements are included as **Exhibit I** of the Agreement.

2.5.3. CMAR: The CMAR will collaborate closely with the Owner and Engineer during Phase I Preconstruction Services to develop a design that achieves the Owner's scope, cost, quality, and schedule objectives.

2.5.3.1. CMAR shall provide all Key Personnel identified in the CMAR's response to the Request for Proposal (RFP) in accordance with Paragraph 2.1.7 of the General Conditions, as well as the other personnel necessary to fully meet the CMAR's obligations for the Preconstruction Phase Services. Within ten business days of the Phase I Notice to Proceed, provide confirmation that any

organizational charts identifying all Key Firms and Key Personnel, their firm affiliations, and reporting relationships provided with the CMAR's proposal remain intact.

- 2.5.3.2. Owner expects Key Personnel and Key Firms included with the CMAR's proposal to be available to provide services for the Phase I Preconstruction Services portion of the project in accordance with Paragraph 2.17 of the General Conditions. CMAR shall not substitute Key Personnel or Key Firms, except in unavoidable circumstances. In such circumstances the CMAR shall notify the Owner in writing.

2.6. CMAR Preconstruction Services Phase General Duties

- 2.6.1. Consult with, advise, and provide recommendations to the Owner and the Engineer on constructability aspects of the design and proposed construction of the Project.
- 2.6.2. Participate in collaborative meetings led by the Engineer to review design issues and documents, which will include facility-by-facility review and may include discipline-by-discipline review. CMAR is expected to involve CMAR major Subcontractors if part of the CMAR team as deemed relevant.
- 2.6.3. Coordinate and lead collaborative meetings with the Owner and Engineer to review, at a minimum but not limited to, Risk Register, ongoing cost trending analysis, Project sequencing/Schedule, value engineering, and constructability issues.
- 2.6.4. The CMAR's Key Personnel shall participate in key milestone design reviews to be conducted by the Engineer.
- 2.6.5. Plan and perform field investigations needed to validate existing Site conditions, or assess the condition of existing facilities.
- 2.6.6. Work with the design team to develop Bid Packages that align with the proposed sequence of construction and trade packaging and according to the Owner-approved Procurement Plan.
- 2.6.7. Coordinate with the Engineer and local authorities having jurisdiction to ensure seamless transition into construction.
- 2.6.8. Unless otherwise mutually agreed in writing by the Owner and the CMAR, the Preconstruction Phase Services described in this **Exhibit B** do not require or obligate the CMAR to generate or produce any design or engineering for the Project.

TASK 1 Project Management and Coordination

Provide overall project management of the CMAR services and ensure coordination of all CMAR efforts with the Owner, the Engineer, and others as appropriate. Task 1 provides for management, administration, and coordination with project stakeholders. Services to be provided by the CMAR are detailed in the following subtasks comprising Task 1.

1.1 Project Management and Administration

This task involves managing the Agreement and confirming compliance with its terms and conditions, developing any scope amendments that may be required, and general communications between Owner and CMAR as required. CMAR will provide oversight of its project staff, manage efforts of CMAR team and ensure coordination with Owner, Engineer, and other project participants during the Preconstruction Phase Services. CMAR shall prepare and submit monthly invoices. Form of invoice including Phase I Schedule of Values, shall be approved by Owner prior to approval of the first invoice.

CMAR shall submit a proposed Phase I Schedule of Values for Phase I Preconstruction Services in such form and supported by such data as Owner may require to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes.

Unless otherwise agreed by Owner, the Phase I Schedule of Values shall be organized to conform to the agreed upon work breakdown structure format with values for each task. The sum of all values listed in the Phase I Schedule of Values shall equal the Preconstruction Phase Services Cost. On a monthly basis, CMAR shall provide to Owner an updated Phase I Schedule of Values for the Phase 1 Work. Each such update shall include actual start and/or finish dates and percentages complete. The Phase I Schedule of Values shall be used as the basis for any invoice for payment under the Agreement as well as a basis for identifying savings and overruns.

CMAR will prepare and submit with their monthly invoice a progress report summarizing activities completed for the current invoice period as well as activities planned for the upcoming month. A cost summary will be provided, presenting actual costs versus planned costs with details regarding any variances to plan. A summary narrative of planned versus actual schedule progress will be presented with updates on key milestones dates and activities. The report will include narrative regarding design

development support activities, Project risks, and issues being faced by the team. Template of progress report shall be approved by Owner prior to approval of the first invoice. The current Risk Register (Subtask 1.3) and Design Log (Subtask 1.4) will be included as attachments to monthly reports. Monthly Project reports will be presented in a format to be agreed upon between the CMAR and Owner within 30 days of NTP.

Deliverables:

- Monthly invoices
- Monthly progress reports and attachments

1.2 Schedules

Within 45 calendar days of CMAR's receipt of the 60% Design, CMAR shall develop and submit a draft critical path method (CPM) Schedule using the latest version of Primavera P6 or equal. Incorporate permit application submittals, issuance, and compliance into baseline schedule. Identify all critical path activities, including long-lead equipment procurement items, if any, and provide recommendations to the Owner and the Engineer to optimize schedule and prevent or minimize Project delivery impacts.

The Schedule will include detail level activities for CMAR's Preconstruction Services scope and summary level detail for the Phase II Construction Services activities. It shall identify all required reviews and approvals (internal and external to team), and appropriate levels of information necessary for action and timely response. CMAR shall identify tasks which may require action by the Owner. The Engineer will provide the CMAR with its detailed schedule for design phase activities for incorporation into the overall Schedule.

Schedule shall include preconstruction, construction, permitting, procurement, and facility start-up activities as well as Project milestones. CMAR and Engineer shall collaborate in developing drawing package issuance schedules to meet requirements of the Schedule.

After the Preconstruction Scheduling Meeting (Subtask 2.2) CMAR shall expand the schedule to include detailed construction activities. The 90% shall be the basis for the GMP negotiations, and shall serve as the Proposed Baseline Schedule. The Proposed Baseline Schedule shall meet requirements of Division 1 Specifications – General Requirements. During preparation of the Proposed Baseline Schedule, Engineer will facilitate CMAR's efforts by answering questions regarding sequencing issues,

scheduling constraints, interface points, and dependency relationships. The Schedule shall include all items identified in Agreement, major sequences of the preconstruction and construction work, subcontract bid package development, GMP negotiations, subcontract bidding/procurement, times of commencement and completion required of each Subcontractor, ordering and delivery of products, including those that must be ordered well in advance of construction, the occupancy requirements of the Owner, material supplies, Engineer's approval of shop drawings, anticipated outages to the existing facility, and performance testing requirements. Included in this schedule shall be summary level detail of all anticipated construction activities. The schedule shall identify all long-lead procurement items.

CMAR will submit draft Schedule to Owner and Engineer for review. CMAR will resolve the review comments with Owner and Engineer for incorporation into the Schedule.

The Schedule will be updated at every formal design milestone after Owner acceptance of draft Schedule.

The expanded and revised Schedule will be incorporated into CMAR's Phase II Construction Price Proposal as the Proposed Baseline Schedule. Once Owner has accepted the schedule, it will be the Baseline Schedule and will be included in the Phase II Construction Price Amendment.

CMAR will submit draft Proposed Baseline Schedule to Owner and Engineer for review. CMAR will resolve the review comments with Owner and Engineer for incorporation into the Baseline Schedule.

Deliverables:

- Draft and revised Proposed Baseline Schedule
- Owner-accepted Baseline Schedule

1.3 Risk Management

In conjunction with the Owner's initial Risk Register, CMAR shall develop and maintain a Project Risk Register during Phase I. Risk Register shall be used to inform and develop appropriate and Project-specific contingency values throughout Phase I. Within 30 days of NTP, CMAR shall submit the initial construction Risk Register in a format approved by the Owner and include a qualitative analysis of all risks identified.

CMAR shall facilitate an initial Risk Management Workshop for Owner, CMAR team, and Engineer to concur on Risk Register completeness to be reviewed at the Kick-off meeting. CMAR shall perform quantitative risk analysis to be the basis for the Risk Contingency estimate included in each cost estimate submittal (Subtasks 4.2.2 and 4.3.2) and be prepared to justify values requested for contingency. CMAR shall conduct a Risk Register Review during the Kick-off, the 60% Design Workshop, the 90% Design Workshop, and the Construction Price Proposal Presentation Meeting with the Owner and Engineer to update risks, mitigation activities, and potential cost and schedule impacts prior to submission of each milestone cost estimate.

Deliverables:

- Draft Risk Register
- Revised Risk Register with the 60% and 90% cost estimate submittal
- Revised Risk Register with the Construction Price Proposal Presentation Meeting
- Additional updates of Risk Register as described in subsequent subtasks

1.4 Design Logs and Lists

Following the Owner's issuance of the Phase I NTP and thereafter during the design of the Project, the CMAR will coordinate with the Engineer who will develop and maintain a design log per reservoir that capture changes and decisions made with respect to deviations from the accepted Cost Model and related Scope of Work.

CMAR shall contribute to, or develop and maintain the following lists and logs, and provide updates as required in subsequent subtasks:

- Submittals List which shall include Submittals required in the Contract Documents but not limited to test plans, training plans, test procedures, operation and maintenance manuals, shop drawings, samples, record documents, and specifically required certificates, warranties, and service agreements. Draft Submittals List will be prepared for each milestone design review per Subtask 4.2.1 and Subtask 4.3.1, and included with the draft Phase II Construction Price Proposal (Subtask 5.1). Final Submittals List will be included in the Phase II Construction Price Amendment.
- Identify Submittals using start dates.
 - Indicate week and month anticipated for Submittal to Engineer and release for manufacturing or fabrication, manufacturing, fabrication, and delivery.

- Requests for substitutions for deviation from the Water Authority design standards or previously accepted design assumptions. The request must include data for “Or Equals” or substitutions.
- CMAR shall also contribute information as requested by Engineer and Owner to assist with Engineer’s tracking of design evolution. This log will be developed by Engineer initially to identify and track design changes between technical documentation provided in the Request for Qualifications, Request for Price Proposals, and the 60% Design (Subtask 4.2). CMAR shall provide Engineer rough order of magnitude (ROM) cost and time impacts on budget and schedule for changes have been approved by Owner.

Logs shall track all proposed positive and negative costs and schedule changes to the Cost Model and Schedule as well as those changes ultimately approved by the Owner as value engineering concepts, and risk mitigation concepts. Logs will track all potential scope change items, identify the options for resolving the change, and estimate the net cost and schedule impact associated with adopting the change. Logs will allow for real-time tracking of deviations from the Cost Model. Items will be reviewed with the Owner and Engineer for each reservoir as part of the 60% Design Workshop meeting, the 90% Design Workshop meeting, and at one additional meeting as needed (3 meetings per reservoir) during the design of the Project (in conjunction with Subtask 2.6).

Deliverables:

- Logs and lists, as described above
- Regular updates of logs and lists, as described in subsequent subtasks

1.5 Preconstruction Plan

Unless specifically indicated otherwise in the description of the specific Preconstruction Plan, the CMAR shall develop and maintain the Plans described in this section and provide updates as required in subsequent subtasks. Unless indicated otherwise, Plans will be developed based on 60% Design documents and finalized based on 90% Design documents for inclusion with each Phase II Price Proposal. Unless indicated otherwise, each Plan shall be submitted as draft with or prior to the 60% Cost Estimate (Subtask 4.2.2.). Owner review comments shall be reflected in the revised Plan and submitted with the final 60% Cost Estimate. Plans shall be updated to reflect design changes and advancement and submitted with 90% Cost Estimate (Subtask 4.3.2.). Approved Plans shall be submitted with the Phase II Construction Price Proposal (Subtask 5.1.) for incorporation to the Phase II Construction Price Amendment.

1.5.1 Project Management Plan

Within 45 days of the Phase I NTP, CMAR will submit a draft of the first version of the Project Management Plan (PMP). After initial approval by Owner, the PMP will be updated after 60% Design and submitted as a second version to be approved prior to CMAR's submittal of the 90% Cost Estimate. The second version shall describe CMAR's execution of the Phase II Construction Services.

The format and level of detail for each section of the PMP shall be acceptable to the Owner. The PMP will specifically address the following items for each version, Phase I Preconstruction Services and Phase II Construction Services, as shown in the following table:

PMP Section/Topic	Phase I Preconstruction Services	Phase II Construction Services
CMAR's organization and key staff responsibilities	X	X
Template for monthly invoicing and progress reporting	X	
Communication protocols, document management and control, decision review process, and dispute resolution matrix	X	X
Risk management plan, including proposed format and process for risk management (e.g. format of risk register, risk management process, etc.)	X	X
Procedures for cost and schedule control including proposed construction schedule format and structure	X	X
Plan for maintaining logs in Subtask 1.4 (as it applies for tracking issues/responses)	X	X
Quality management processes for delivery of Phase I Preconstruction Services (Subtask 1.5.2)	X	X
Change management and tracking	X	X
Site logistics, access and control issues (site security, traffic, pedestrian access, parking, noise and vibration, hoisting equipment, survey, etc.)	X	X
Site staging including construction offices, laydown and work areas, temporary facilities and utilities	X	X
Value engineering procedures	X	X

PMP Section/Topic	Phase I Preconstruction Services	Phase II Construction Services
Startup and Commissioning Plan (Subtask 1.5.5)	X	X
Sequencing of the work, including consideration to avoid interruptions to Water Authority's ongoing operations	X	X
Other project management requirements	X	X

Owner and Engineer will review the draft PMP and provide comments to the CMAR. The CMAR will resolve the review comments with Owner and Engineer for incorporation into the final PMP, for each respective version.

Based on the Owner review and feedback, submit the final Project Management Plan within 14 days of receiving the Owner's comments.

Deliverables:

- Draft, revised, and Owner-accepted final PMP

1.5.2 Quality Management Plan

CMAR shall develop a draft Quality Management Plan (QMP) that discusses its Quality Assurance/Quality Control Program (QA/QC Program) during the construction of the Project. CMAR shall identify a Quality Control Manager (QC Manager) who is responsible for implementing the QA/QC Program and identify the responsibilities for the CMAR, Owner, Engineer, and third-party testing agencies to ensure conformance to the Contract Documents.

Draft and final QMP shall include, at a minimum:

- A statement by CMAR's Project Manager designating the QC Manager and specifying the authority delegated to the QC Manager to direct cessation or removal and replacement of defective Work.
- Describe the QA/QC program and include procedures, work instructions, and records. Describe methods relating to areas that require special testing and procedures as required by the Specifications.
- Include specific instructions defining procedures for observing Work in process and comparing this Work with the Agreement requirements (organized by specifications section).

- Describe procedures to ensure that equipment or materials that have been accepted at the Worksite are properly stored, identified, installed, and tested.
- Include procedures to verify that procured products and services conform to the requirements of the Specifications. Requirements of these procedures shall be applied, as appropriate, to lower-tier Suppliers and/or Subcontractors.
- Commissioning quality control: Include procedures to verify that the commissioning requirements of the Contract Documents are integrated into the QA/QC Program and QMP and conform to the requirements of the Specifications. Requirements of these procedures shall be applied, as appropriate, to the CMAR and the lower-tier Suppliers and/or Subcontractors.
- Include instructions for recording inspections and requirements for demonstrating through the Daily Inspection Reports that Work inspected was in compliance or a deficiency was noted and action to be taken. The Daily Inspection Report content and format will be collaboratively developed during Phase I Preconstruction.
- Defects and Corrective Action: Include procedures for avoiding and handling deficiencies and non-conforming Work. Deficiencies and non-conforming Work are defined as documentation, drawings, material, equipment, or Work not conforming to the indicated requirements or procedures. The procedure shall prevent non-conformances by identification, documentation, evaluation, separation, disposition, and corrective action to prevent reoccurrence. Conditions having adverse effects on quality shall be promptly identified and reported to the senior level management. The cause of conditions adverse to quality shall be determined, and documents and measures shall be implemented to prevent recurrence. In addition, at a minimum, this procedure shall address:
 - Personnel responsible for identifying deficient and non-complying items within Work.
 - How and by whom deficient and non-compliant items are documented "in the field."
 - Personnel and process utilized for logging deficient and non-compliant Work at the end of each day onto a deficiency log.
 - Tracking processes and tracking documentation for deficient and non-conforming Work.
 - Personnel responsible for achieving resolution of outstanding deficiencies.
 - Detailed procedures for the performance and control of special processes (e.g., surface preparation, materials application, welding, soldering, heat treating, cleaning, plating, nondestructive examination, etc.).

- Procedures to preclude the covering of deficient or rejected Work.
 - Notification of Owner of deficient work and corrective actions.
- Include procedures for halting or rejecting Work.
- Include procedures for resolution of differences between the QC Manager and the production personnel.
- Identify contractual hold/inspection points as well as any CMAR-imposed hold/inspection points.
- Discuss document control/quality records:
 - Establish methods for control of Contract Documents that describe how Drawings and Specifications are received and distributed to ensure the correct issue of the document being used. Describe how record document/drawing data are documented and furnished to Engineer.
 - Develop a list of specific records as required by the Contract Documents that will be furnished to Engineer at the completion of activities.
- Include a schedule of tests, inspections, and similar quality-control services required by the design documents. This schedule shall include the following:
 - Specification section number and title
 - Brief description of test and inspection
 - Identification of applicable standards
 - Identification of test and inspection methods
 - Number of tests and inspections required

Draft QMP shall be submitted for Owner and Engineer review a minimum of 14 calendar days prior to QA/QC Program Meeting (Subtask 2.3). The results of the meeting shall inform revisions to the draft Plan that shall be submitted with CMAR's 90% Cost Estimate (Subtask 4.2.2). CMAR will update QMP based on Owner review comments and design development for inclusion in the draft Phase II Construction Price Proposal in Task 5.1.

Deliverables:

- Draft, revised, and Owner-accepted final QMP

1.5.3 Environmental Management Plan

Provide an Environmental Management Plan detailing programs for a Stormwater Pollution Prevention Plan and handling other environmental issues (dust, on-site chemicals, fuel, and similar items) if required to comply with Applicable Law.

Environmental Management Plan detailing programs for a stormwater pollution

prevention plan and handling other environmental issues (dust, on-site chemicals and fuel, etc.) if required to comply with permits and regulations applicable to the Project.

Deliverables:

- Draft, revised, and Owner-accepted final Environmental Management Plan

1.5.4 Procurement Plan

CMAR shall submit draft Procurement Plan prior to or with the Cost Estimate Submittal based on 60% Design (Task 4.2.2), that includes, at a minimum:

- Scope of work and cost estimates for each bid package
- Procuring subcontracted work
- A proposed price and scope of work for any self-performed portion of the Project
- Basis used by the CMAR to develop all cost estimates, including the self-performed portion of the Project

Procurement Plan shall also address the following:

- Funding Source Subcontractor Engagement Requirements. Demonstrate how CMAR will meet all funding requirements regarding subcontracting and procurement including approach to engage and encourage participation from minority certified or local firms to meet or exceed Project SBE, MBE, WBE, DBE, and LBE federal contracting goals.
- Basis for Work Packages. Based on the expected work to be performed for the Project, the CMAR's Procurement Plan shall identify how the work will be broken into work packages (subcontract, vendor, and supplier) that will maximize bidder participation and competition, address schedule sequencing constraints, and provide best value to the Owner. CMAR shall identify long-lead procurement items and anticipated schedule. Include the scope of work, schedule, delivery method, and subcontract bidder responsibility criteria for each contract package. If pre-bid eligibility of subcontractors is recommended, this should be included, along with a schedule to ensure sufficient time to establish such eligibility criteria and conduct the qualification process. The Procurement Plan shall also identify construction work packages for which the CMAR plans to submit their own sealed, competitive bid(s) and self-perform those packages. CMAR shall note that Owner may manage bid openings in which CMAR submits a bid.
- Approach for Fostering Competitive Market. CMAR shall describe approach for, and ensure, that subcontracting opportunities within each subcontract bid package are clearly identified and that these opportunities will attract a high level

of competition from responsible local subcontractors. The Procurement Plan will describe the CMAR's approach for inviting competitive bids for the construction trade work packages, and requests for quotations for equipment and material. Plan shall address subcontractor and supplier buyout, and how CMAR will obtain maximum value and maintain price competitiveness. CMAR shall develop a plan to involve the best qualified subcontractors in the Project. Describe the criteria (qualifications and price) that will be used to analyze competitive bids for each element of the Work. Provide a recommendation for receipt, opening, and evaluation of competitive bids and quotes in compliance with the Owner's procurement rules.

- Procurement Plan should include a description of how the procurement approach will change as Project advances to GMP and post Phase II Construction Price Amendment and identify suppliers and subcontractors to be sourced pre-GMP versus post-GMP.

Within 7 calendar days after CMAR's receipt of Owner comments, CMAR will convene a workshop (Subtask 5.2.1) to review and resolve Owner comments on the Procurement Plan. CMAR will submit a revised, final Procurement Plan incorporating Owner's comments within 7 calendar days of the workshop.

CMAR will update the Procurement Plan based on the CMAR's final approach to bidding the Project. CMAR will use the 90% design documents for the technical content to be provided in the trade subcontract bid documents, and equipment and material requests for quotations.

Copies of all subcontracts, including all modifications and/or revisions will be furnished to Owner within 7 calendar days from issuance.

Deliverables:

- Draft, revised, and Owner-accepted final Procurement Plan

1.5.5 Commissioning Plan

CMAR, Engineer, and Owner shall discuss and confirm roles and responsibilities during the commissioning phase during the 90% Design Review Workshop. CMAR shall develop a draft Commissioning Plan that supports costs for Startup, Commissioning and Acceptance Testing as provided in the Cost Model. The draft Commissioning Plan will be included in CMAR's Phase II Construction Price Proposal. During design reviews and

discussions, CMAR shall also inform Owner and Engineer of any additions to the Project engineering and design that would facilitate commissioning and acceptance.

Commissioning Plan shall lay out the CMAR's overall plan for performing all testing activities required by Contract Documents, as applicable. It should discuss the organization of the Commissioning team, roles and responsibilities of team members, and the lines of communication. The Plan shall also include a description of services, materials, and equipment to be provided and by whom.

Deliverables:

- Draft, revised, and Owner-accepted final Commissioning Plan

1.5.6 Health and Safety Plan(s)

CMAR shall engage with Engineer and Owner no later than 15 days from Phase I NTP to gather information needed for developing the Preconstruction Health and Safety Plan to support site investigations during the Preconstruction Services Phase of the project.

The Preconstruction Health and Safety Plan shall be developed for site investigations which may include soil borings, subsurface utility locations, confirmation of facility as-built, dry reservoir entry, and assessment of structural conditions as well as other investigations as required. CMAR will develop plan to be suitable for the site investigations to be performed that provide the controls needed to eliminate or minimize occupational injuries, illnesses, and damage to Owner property. CMAR will submit draft Preconstruction Health and Safety Plan for Owner review and comment. The draft Preconstruction Health and Safety Plan will be due within 30 days from Phase I NTP. CMAR will reconcile and incorporate Owner comments into the final Preconstruction Health and Safety Plan and update Plan as necessary for Preconstruction Services.

The CMAR shall develop a draft Construction Health and Safety Plan for Phase II Construction Services and submit with its 90% Cost Estimate Submittal (Subtask 4.3.2). CMAR will finalize Construction Health and Safety Plan based on Owner review comments for inclusion in the draft Phase II Construction Price Proposal in Task 5.1.

Deliverables:

- Draft and final Preconstruction and Construction Health and Safety Plan

TASK 2 Meetings

Meetings described in TASK 2 are intended for the administration of the Preconstruction Services and preparation for administration of the Construction Services. Recurring collaborative meetings are also included. Meetings specifically for reviewing design milestone documentation, cost estimates, and discussion of design milestone reviews are included in TASK 4 and TASK 5 scope.

2.1 Kick-off Meetings

After the Initial Site Visit described in Task 3, the Owner and the Engineer will schedule the Kick-off Meeting.

CMAR will be responsible attending one Project Kick-off Meeting for each reservoir. Attendees will include key staff from Owner, CMAR, and Engineer. CMAR attendees shall include, at a minimum, the Key Personnel. The purpose of the meeting is to introduce Key Personnel, define roles and responsibilities of team members, review Risk Register, discuss project administration including review of monthly invoicing and progress reporting, and to discuss and implement procedures allowing Owner, CMAR, and Engineer to perform their respective obligations of the Project and maximize value of the CMAR delivery model. The Engineer will prepare a meeting summary and will distribute to the attendees.

Assumptions:

- Each meeting is assumed to last no more than 2-hours per reservoir and will be conducted in-person.

Deliverables:

- Key Personnel roster with names, phone numbers, role during Preconstruction Services.
- Risk Register

2.2 Preconstruction Scheduling Meeting

CMAR shall hold and lead this meeting within 7 days after the 60% Design Review Workshop, or earlier when mutually agreeable, to establish the format and features of the Baseline Schedule. Also on the meeting agenda shall be:

- Schedule updates and reporting requirements
- Schedule revision procedures
- Schedule delay analysis procedures
- Schedule methodology

- Planned sequence of operations
- Action items.

Attendees for this meeting shall include CMAR's Project Manager, Construction Manager, Superintendent, Lead Scheduler, Owner, Engineer, and others necessary to support the agenda.

Assumptions:

- Each meeting is assumed to last no more than 2-hours per reservoir and will be conducted virtually.

Deliverables:

- Agenda and Meeting Summary

2.3 QA/QC Program Meeting

Within 120 days of the NTP, CMAR will convene a meeting with Owner and Engineer to present CMAR's proposed approach for implementation and management of the construction QA/QC program. This meeting will discuss the CMAR's recommended approach for the performance of quality control and quality assurance during the construction of the project. A key aspect of this discussion will be to reach agreement on the roles and responsibilities for the CMAR, Owner, Engineer, and third-party testing agencies. The decisions made from this meeting will inform the CMAR's QMP provided in Subtask 1.5.2 as well as support CMAR's cost estimate(s).

Assumptions:

- QA/QC Program Meeting is assumed to last no more than 2-hours and will be conducted virtually.

Deliverables:

- Agenda and Meeting Summary

2.4 Monthly Progress Meetings

Beginning at NTP until negotiation of final Phase II Construction Price Amendment is completed, CMAR shall conduct Progress Meetings on a monthly basis during the Preconstruction Services Phase. The standing meeting agenda will be developed by the CMAR with input from Owner and the Engineer, and will include schedule and cost estimate updates as well as updates to the Preconstruction logs and lists in Subtask 1.4.

Agenda will also include construction market updates describing CMAR's tracking of factors that would or may affect costs and time for completing the Project and escalation trends.

CMAR shall undertake a cost trending analysis of the Project's projected cost versus the Cost Model in accordance with the Schedule, and shall promptly advise the Owner and the Engineer when any cost estimates generated by the CMAR are trending above the Cost Model previously approved by the Owner for the Project.

Progress Meetings will be conducted at a time agreed upon by Owner, CMAR, and Engineer.

Assumptions:

- Each meeting is assumed to last no more than 2-hours per reservoir and be conducted virtually.

Deliverables:

- Agenda and logs or lists referenced in agenda
- Meeting summaries

2.5 Design Coordination Meetings

Participate in up to (2) Design Coordination meetings or workshops per reservoir with the Engineer, the Owner, or Others as needed to support design development and help inform Owner and Engineer decisions. Meetings will be coordinated by the Engineer and attended by CMAR's Key Personnel unless indicated otherwise. The CMAR is responsible for notifying the team of any perceived cost or Schedule impacts during these meetings and following up with the appropriate documentation, and the CMAR will also highlight potential cost and Schedule-saving alternates during these meetings. CMAR shall provide Owner and Engineer updates to all Preconstruction logs three business days prior to each meeting and be prepared to discuss updates at each meeting.

Assumptions:

- Each meeting is assumed to last no more than 1-hour per reservoir and be conducted virtually.

Deliverables:

- Agenda and Meeting Summary

2.6 Additional Meetings

CMAR shall plan to participate in up to 10 one-hour *ad hoc* meetings or workshops with the Owner, Engineer, or others as needed and directed by the Owner, including up to three two-hour meetings with the Owner and Engineer regarding the Owner's Asset Management On-Boarding Workbook process being led by the Engineer. The CMAR will complete the asset management workbook during Phase II Construction Services.

CMAR shall also be available to attend Cost Alignment and Consensus Meetings as may be needed and described in Attachment A. CMAR shall not be entitled to compensation for additional meetings associated with extra effort expended on cost alignment due to the lack of required information or formatting of cost model and plan deliverables.

Assumptions:

- Each meeting is assumed to last no more than 1-hour per reservoir and be conducted virtually.

Deliverables:

- Agenda and Meeting Summary

TASK 3 Site Investigations

CMAR shall coordinate with the Engineer and Owner to identify field investigations required to support design development and prepare risk mitigation plans. Specific investigations are described in subtasks within this task.

3.1 Initial Site Visits

At the start of the Phase I Preconstruction Services, the CMAR shall complete site visits for all the reservoirs with the Owner and the Engineer. Reservoir site visits are assumed to be an average of 3-hrs each and will be conducted over a consecutive 2-3 day period. Note only the exterior of the reservoirs and the site shall be observed at this time. The CMAR will review the record drawings and inspection reports (provided by the Owner) for each reservoir.

Assumptions:

- Each meeting is assumed to last no more than 3-hours per reservoir and will be conducted on-site in-person.

Deliverables:

- Provide written initial constructability comments/concerns.

3.2 Subsurface Utility Verifications

CMAR shall assist the Engineer in field verification of existing utility locations within the boundaries of the site work areas. CMAR shall be responsible for subcontracting for subsurface utility verification services. Engineer will support these investigations by providing documentation of the findings with a memorandum and marked up site plan. CMAR and Engineer will determine if the utility verifications identify impacts on the design and construction of the project.

Assumptions:

- Each meeting is assumed to last no more than 2-hours per reservoir and be conducted on-site in-person.

Deliverables:

- Provide utility locations to Engineer for documentation.

3.3 Verification of As-Built Conditions and Dry Inspections of Reservoirs

CMAR shall assist Engineer in the validation of as-built conditions of the existing facilities to identify constructability issues which may impact construction means and methods.

The CMAR will coordinate with Owner to provide dry interior inspections of reservoirs. The CMAR shall be responsible for removing residual water from reservoir, desilt and clean the reservoir interior, install scaffolding as required, and participate in dry inspections with the Owner and the Engineer. The CMAR will provide written recommendations for reservoir repairs. The CMAR will obtain a Fire Hydrant Meter Permit, disinfect, and fill the reservoir using an air-gap. The CMAR will allow for bac-T testing and the Owner will put the reservoir back into service.

Assumptions:

- CMAR to provide for Reservoir Dry Inspections and refilling of the Reservoirs as detailed in the Request for Qualifications.
- Engineer to evaluate and document as-built conditions through annotated drawings.

- CMAR shall document existing conditions joints, slabs, and other interior/exterior elements of the reservoirs.
- Each dry inspection is assumed to last no more than 16-hours per reservoir and will be conducted on-site in-person.

Deliverables:

- Provide for Reservoir Dry Inspections and refilling of the Reservoir
- Provide one report per reservoir describing existing conditions and repair recommendations for each reservoir.

TASK 4 Design Support

4.1 Basis of Cost Estimate Submittal Report

CMAR shall prepare and submit a Basis of Cost Estimate Submittal Report documenting the approach to be used in preparing Cost Estimates as required by Attachment A to this Scope of Work. Report shall include the sources of cost information, estimating software and descriptions of the estimating process, and provide a checklist to track completeness of estimate submittals. A template cost model, or example from another project, must accompany the Basis of Cost Estimate Submittal Report to demonstrate level of detail and format to be expected with Cost Estimate.

CMAR will convene a meeting with the Engineer and Owner to address report review comments and reconcile. A final Basis of Cost Estimate Submittal Report is required prior to Owner and Engineer review of 60% Cost Estimate. CMAR is responsible for scheduling the submittal of draft report timely to avoid delaying 60% Design review schedule.

Assumptions:

- Owner shall provide review comments within 14 calendar days of draft Basis of Cost Estimate Submittal Report.
- Review meeting is assumed to last no more than 2-hours and will be conducted virtually.

Deliverables:

- Draft and final Basis of Cost Estimate Submittal Report including cost model example or template

4.2 60% Design Review

As the design is advanced to 60% design phase, the CMAR will support the Engineer through informal interaction, cooperation, coordination, collaboration, and communication. CMAR will address day-to-day matters of design development involving constructability, cost, tie-in approaches, design discipline coordination, risk identification and their planned mitigations, and other matters that Engineer and Owner seek support. Through this interaction, CMAR will actively update and maintain the Issues Log and Risk Register, provide input to the Engineer's design evolution log, and provide formal updates at monthly project meetings with the Engineer and Owner.

4.2.1 60% Design Workshops

Two Design Workshops per reservoir are to be conducted with the CMAR, Engineer, and Owner for reviewing the 60% Design:

- 60% Design Review Workshop
- 60% Design Reconciliation Workshop

The 60% Design Review Workshop will be held as soon as the CMAR receives the 60% Design milestone documents. At this workshop the Engineer will present the 60% Design to Owner and the CMAR. CMAR shall review documents for the elimination of conflicts, omissions, dimensioning, and other potential problems as well as the following:

- Address perceived cost or schedule issues. Include potential cost- and schedule-saving alternates.
- Provide list of additional details needed to complete the Project per the Owner's schedule requirements.
- Provide information on material availability, long-lead material procurement needs, and recommendations on equipment and/or packaging to advance construction. Discuss any anticipated supply chain issues.
- Make recommendations regarding the division of the work to facilitate bids and proposals for the major elements of the Work.
- Advise the Owner regarding ways to gain efficiency in Project delivery.
- Risk Register Review

Within 21 calendar days after the conclusion of the workshop, the CMAR will produce a summary of review comments focused on value engineering concepts, constructability, design coordination, and issues, if any, related to project implementation. CMAR shall

include the Submittals List for the submittals anticipated within the first 90 days after NTP of each Phase II Construction Services Amendment.

The 60% Design Reconciliation Workshop will be held within 21 calendar days of the 60% Design Constructability Review Workshop. The Engineer will present their proposed resolutions to the CMAR and Owner's 60% design review comments.

Assumptions:

- Each workshop is assumed to last no more than 3-hours and will be conducted in-person.

Deliverables:

- Workshop notes
- Input for Engineer's design evolution log update based on the 60% Design Reconciliation Workshop
- Issues Log update
- Risk Register update
- Submittals List for submittals expected

4.2.2 Cost Estimate Submittal based on 60% Design

Within 28 calendar days from the 60% Design Reconciliation Workshop, CMAR will prepare the Cost Estimate Submittal in accordance with the cost model methodology provided as Attachment A to this Scope of Work and approved Basis of Cost Estimate Report (subtask 4.1), and submit to the Owner and Engineer for review. CMAR shall furnish copies of quotations to Owner in its Cost Estimate Submittal. This estimate will provide information for the Owner and Engineer to assist in evaluating alternative designs, equipment, materials or other variations in implementation of the project and will provide the basis tracking costs to the GMP negotiations. Cost Estimate shall include adopted changes resulting from various Project reviews and other accepted changes as well as changes from the 60% Design Reconciliation Workshop. CMAR shall incorporate information on labor rates, productivity, pricing of materials and equipment, overhead costs and escalation to produce a complete final Class 3 cost estimate of all the work to be included in the Phase II Construction Price. Cost Estimate Submittal shall comply with the guidelines established by the Association for the Advancement of Cost Engineering (AACE) Recommended Practice 19R-97 and cost model methodology shall be as required in Attachment A to this Scope of Work, and submit to the Engineer and Owner for review.

CMAR will convene a meeting with the Engineer and Owner to address estimate review comments and reconcile cost elements that appear to be misaligned with the project's intended scope. CMAR will prepare and submit a revised Class 3 estimate incorporating the results of the reconciliation review and input to Engineer's updated design evolution log if changes to design were made.

Assumptions:

- Each meeting is assumed to last no more than 2-hours and will be conducted in-person.

Deliverables:

- Draft and final Cost Estimate Submittal based on 60% Design and 60% Design Reconciliation Workshop including Basis of 60% Estimate Memorandum, Attachments identified in Attachment A, and Plans as identified in Subtask 1.5.

4.2.3 Value Engineering and Constructability Review of 60% Design

CMAR shall perform an initial value engineering and constructability review on the 60% Design deliverables as well as changes from the 60% Design Reconciliation Workshop within 28 calendar days of the 60% Design Reconciliation Workshop. Constructability review should also address the feasibility of utilizing State Revolving Funds (SRF), Water Infrastructure Finance and Innovation Act (WIFIA), or other anticipated potential funding in terms of compliance with anticipated funding requirements such as Build America, Buy America (BABA) and American Iron and Steel (AIS) and impacts to the construction cost and/or schedule. Comments generated from this review shall be recorded in a spreadsheet summarizing the comment, its positive or negative benefits, as well as an order of magnitude assessment of the impact to the project cost and schedule.

CMAR shall identify drawings, specifications and/or interfaces with other contract designs that will require modification as a result of each proposed change and assist in evaluating design costs and schedule impacts related to each proposed change. The CMAR will submit the spreadsheet to Owner and the Engineer for review and evaluation.

Value engineering reviews shall identify, evaluate, and propose cost-effective alternatives to all aspects of the Project design. Such analysis shall be presented by CMAR, as requested by Owner and Engineer, in a format (spreadsheet, report, sketches, drawings, PowerPoint presentation) that enables the Owner and the Engineer to readily

evaluate proposed alternatives on the basis of their potential Project cost and time savings.

CMAR's constructability review shall provide recommendations on the construction documents with issues such as phasing of the work, staging, temporary work, new construction techniques or methods for executing the work, along with identifying where the contract documents are not consistent or complete. CMAR will provide its review to ensure that good building practice is being incorporated into the documents and design elements are buildable as drawn. CMAR will also identify whether project sequencing is viable with respect to third-party requirements. Additionally, CMAR shall

- a. Identify physical conflicts between existing structures and/or utilities;
- b. Confirm that tie-in conditions to existing structures are coordinated with the Drawings;
- c. Confirm that sequencing of the Work is coordinated with the Drawings;
- d. Identify and clarify any potential impacts to existing facility operations which require a mitigation plan to be developed;
- e. Identify site logistics which need to be incorporated into the Drawings; and
- f. Identify items or issues in the Drawings which may cause the Project additional cost and time impacts and which can be avoided or eliminated from the Project.

Within 21 calendar days of the CMAR's submission to Owner and the Engineer, CMAR shall convene a meeting to receive input and address questions from Owner and the Engineer on the CMAR's review comments. At this meeting, Owner shall identify value engineering and constructability review comments which are to be incorporated into the project scope and design.

The Engineer will incorporate Owner-approved modifications resulting from this review into the design evolution log to record design modifications and their overall impact on the project cost and schedule. CMAR shall provide Engineer the analysis of costs and schedules and savings or other benefits that will be gained with the recommended alternatives.

Assumptions:

- Each review meeting is assumed to last no more than 2-hours and will be conducted in-person.

Deliverables:

- Meeting Agenda and Summary
- Value engineering and constructability review spreadsheet for 60% Design
- Value engineering schematics, if requested
- Updated Risk Register
- Written comments for Engineer's updating of the design evolution log incorporating scope changes as agreed upon by Owner

4.3 90% Design Review

As the design is advanced from the 60% to 90% design phase, the CMAR will support the Engineer through informal interaction, cooperation, coordination, collaboration, and communication. CMAR will address day-to-day matters of design development involving constructability, cost, MOPOs, tie-in approaches, design discipline coordination, risk identification and their planned mitigations, and other matters that Engineer and Owner seek support. Through this interaction, CMAR will provide Engineer input for the update to the design evolution log and will actively update the Issues Log and Risk Register, and provide formal updates at monthly project meetings with the Engineer and Owner.

4.3.1 90% Design Workshops

Three Design Workshops are to be conducted with the CMAR, Engineer, and Owner for reviewing the 90% Design:

- 90% Design Review and Design Constructability Workshop
- 90% Design Reconciliation Workshop

The 90% Design Review and Design Constructability Workshop will be held as soon as the CMAR receives the 90% Design milestone documents. At this workshop the Engineer will present the 90% Design to Owner and the CMAR. CMAR shall review documents for the elimination of conflicts, omissions, dimensioning, constructability review, and other potential problems as well as the following:

- Address perceived cost or schedule issues. Include potential cost- and schedule-saving alternates.
- Provide list of additional details needed to complete the Project per the Owner's schedule requirements.
- Provide information on material availability, long-lead material procurement needs, and recommendations on equipment and/or packaging to advance construction. Discuss any anticipated supply chain issues.

- Make recommendations regarding the division of the work to facilitate bids and proposals for the major elements of the Work.
- Advise the Owner regarding ways to gain efficiency in Project delivery.
- Risk Register Review

Within 14 calendar days after the conclusion of the workshop, the CMAR will produce a summary of review comments focused on value engineering concepts, constructability, design coordination, and issues, if any, related to project implementation. CMAR shall include the updated Submittals List for all submittals anticipated during construction.

The 90% Design Reconciliation Workshop will be held within 14 calendar days of the 90% Design Constructability Review Workshop. The Engineer will present their proposed resolutions to the CMAR and Owner's 90% design review comments.

Assumptions:

- Each workshop is assumed to last no more than 3-hours and will be conducted in-person.

Deliverables:

- Workshop Agenda and Summary
- Written comments for Engineer's update to the design evolution log based on 90% Design Reconciliation Workshop
- Issues Log update
- Risk Register update
- Updated Submittals List for all submittals anticipated during construction

4.3.2 Cost Estimate Submittal based on 90% Design

Within 28 calendar days from the 90% Design Reconciliation Workshop, CMAR shall update 60% Cost Estimate to incorporate adopted changes resulting from various project reviews and other accepted changes, incorporate any new information on labor rates, productivity, pricing of materials and equipment, overhead costs and escalation to produce a complete final Class 2 cost estimate of all the work to be included in the Phase II Construction Price. Cost Estimate Submittal shall comply with the guidelines established by AACE Recommended Practice 19R-97 and cost model methodology shall be as required in Attachment A to this Scope of Work, and submit to the Engineer and Owner for review.

CMAR will convene a meeting with the Engineer and Owner to address estimate review comments and reconcile cost elements that appear to be misaligned with the projects intended scope. CMAR will prepare and submit a revised Class 2 estimate incorporating the results of the reconciliation review as well as input for Engineer's update of the design evolution log.

Assumptions:

- Each meeting is assumed to last no more than 2-hours and will be conducted in-person.

Deliverables:

- Draft and final Cost Estimate Submittal based on 90% Design and 90% Design Reconciliation Workshop including Basis of 90% Estimate Memorandum, Attachments identified in Attachment A, and Plans as identified in Subtask 1.5.

TASK 5 Phase II Construction Price Proposals

Unless indicated otherwise by Owner, upon acceptance of 90% Cost Estimate Submittal (Subtask 4.3.2) and 100% Design documents, CMAR shall develop Phase II Construction Price Proposal(s) in accordance with the Agreement. The Phase II Construction Price Proposal(s) will establish the commercial terms for performance of the Phase II Construction Services. Upon Owner acceptance of the Phase II Construction Price Proposal, it is anticipated that Owner and CMAR will amend the Agreement and incorporate the agreed-upon Phase II Construction Price Amendment.

CMAR will develop and negotiate GMP(s) in accordance with the Owner-approved Procurement Plan (Subtask 1.5.4), which may identify multiple GMPs. This task includes utilizing the 90% design documents that have been revised to reflect changes agreed to at the 90% Design Reconciliation Workshop to bid work packages, bid trade subcontract work packages, and request binding quotations for equipment and materials. CMAR will competitively bid the work in accordance with the Procurement Plan and Agreement.

5.1 Phase II Construction Price Proposal Development

CMAR will develop Phase II Construction Price Proposal(s) based on CMAR's recommendation for award of trade subcontract bids, and quotations for equipment and permanent materials. CMAR's recommendations for award will be documented in an open book format. CMAR recommendations for award can be based on cost and non-cost criteria. Examples of non-cost criteria include subcontractor/vendor

qualifications, project approach, acceptance of subcontract and purchase order terms, and other risk factors and should be described in Owner-approved Procurement Plan (Subtask 1.5.4). Additionally, CMAR shall work with Engineer and Owner to develop scope for startup and commissioning that will serve as the basis for a cost allowance in the GMP. The Phase II Construction Price Proposal format will be developed consistently with the requirements established in the Agreement and Attachment A to this Preconstruction Phase Services Scope of Work.

After submission of each Phase II Construction Price Proposal, the CMAR and Owner shall meet to discuss and review Phase II Construction Price Proposal, negotiate in good faith, and attempt to reach agreement on the terms of the Phase II Construction Price Proposal.

CMAR shall include with each Phase II Construction Price Proposal the following:

- Owner-approved Cost Estimate Submittal per Subtask 4.3.2 with any modifications clearly identified
- Proposed Construction Baseline Schedule per Subtask 1.2
- Proposed Phase II Schedule of Values aligned with Proposed Baseline Schedule and requirements of Agreement and Division 1 Specifications – General Requirements
- List of Allowances and alternates
- Drawings and Specifications for the Work covered by the Phase II Construction Price Amendment
- All design, Owner, and construction Contingencies
- Updated plans for construction per Subtask 5.3.
- Final Construction Health and Safety Plan per Subtask 1.5.6
- Final Quality Management Plan per Subtask 1.5.2
- Updated Risk Register
- Draft Submittals List per Subtask 1.4
- CMAR's list of qualifications, Assumptions, Clarifications, and exclusions
- All sales, consumer, use, and similar taxes for the Work covered by the Phase II Construction Price Amendment that is performed by the CMAR and legally enacted at the time Phase II Construction Price Amendment is executed.

Deliverables

- Draft Construction Price Proposal
- Negotiated Construction Price Proposal

5.2 GMP Meetings

5.2.1 Procurement Plan Meeting

Following submission to Owner and the Engineer of the draft Procurement Plan per Subtask 1.5.4 and the Cost Estimate Submittal based on the 60% Design per Subtask 4.2.2, CMAR will conduct an initial GMP Workshop with Owner and Engineer. This workshop will be used to describe the CMAR's approach to competitive bidding of the work, and will also detail CMAR's process for receiving, evaluating and recommending bids and quotations used to establish the basis for each GMP. This workshop will also provide an opportunity to discuss any other aspects of the cost model and Procurement Plan.

Assumptions:

- Procurement Plan Meeting is assumed to last no more than 2-hours and will be conducted in-person.

Deliverables

- Workshop Agenda and Summary

5.2.2 Phase II Construction Price Proposal Presentation Meeting

Within 21 calendar days after receipt of bids and quotations for preparation of the Phase II Construction Price Proposal for each reservoir, CMAR will convene an additional GMP workshop to present the Phase II Construction Price Proposal to Owner and Engineer. The purpose of this workshop is to 1) familiarize Owner with the proposal contents and 2) identify the CMAR's basis of selection of trade subcontractor bids and supplier quotations used to establish the GMP. CMAR will conduct such Workshop for each proposed GMP. The Risk Register will be reviewed and updated during this meeting.

Assumptions:

- Each Phase II Construction Price Proposal Review Meeting is assumed to last no more than 2-hours per reservoir and will be conducted in-person.

Deliverables

- Workshop Agenda and Summary

5.2.3 GMP Negotiation Meeting(s)

Within 14 calendar days of the Phase II Construction Price Proposal Presentation Meeting, the CMAR will convene a series of meetings to negotiate the Phase II Construction Price Proposal with Owner.

Assumptions:

- Each meeting is assumed to last no more than 2-hours per reservoir and will be conducted in-person.

Deliverables

- Workshop Agenda and Summary

5.3 Updated Plans

CMAR will update the Environmental Management Plan, Procurement Plan, Commissioning Plan, the Construction Services section of the Project Management Plan, and the Health and Safety Plan (subtask 1.5) initially developed based on the 60% Design documents. Revisions to the Plans will reflect the results of the bidder outreach campaign, subcontractor, vendor and supplier prequalification process, and design development and shall be used for the basis of each Phase II Construction Price Proposal.

The updated Plans shall be submitted to Owner for review and comment no later than 14 calendar days after the completion of the 90% Design Reconciliation Workshop. Within seven calendar days after CMAR's receipt of Owner comments, CMAR will convene a meeting to review and resolve Owner comments on the Plans. CMAR will submit revised final Plans incorporating Owner's comments with its draft Phase II Construction Price Proposal.

Assumptions:

- Meeting is assumed to last no more than 2-hours and will be conducted in-person.

Deliverables:

- Updated Plans

ATTACHMENT A

COST MODEL GUIDELINES

PART A.1 – INTRODUCTION

As part of performance of the Preconstruction Services Phase the CMAR shall prepare a Cost Estimate Submittal for Construction Services of the Project based on design documents as identified Exhibit B Phase I Preconstruction Services Scope of Work. This Attachment A describes the requirements that the CMAR shall follow to prepare its Cost Model and the Cost Estimate Submittals. Each Cost Estimate Submittal shall represent an “open-book” cost estimate detailing both the direct and indirect cost components.

The CMAR shall prepare and submit the Cost Estimate Submittal to the Owner for review and comment at a point in the design established in Exhibit B Phase I Preconstruction Services Scope of Work. The Owner will either:

1. Accept the Cost Estimate Submittal;
2. Accept the Cost Estimate Submittal with exceptions that the CMAR shall address and resolve in subsequent Cost Estimate Submittal (i.e., the cost estimate with the next design submittal); or
3. Reject the Cost Estimate Submittal for additional refinement or development to meet the Owner’s requirements.

Owner will provide CMAR comments regarding the Cost Estimate Submittal, and whether the Owner accepts, accepts with exceptions, or rejects the Cost Estimate Submittal. A meeting will be held to discuss the Owner’s review comments, as well as how the CMAR intends to address such comments and incorporate those comments into either a revised Cost Estimate Submittal or the subsequent Cost Estimate Submittal (i.e., the cost estimate with the next design submittal).

Upon acceptance by the Owner of the Cost Estimate Submittal based on the 90 percent Design Submittal, the CMAR will be directed to prepare a Phase II Construction Price Proposal. The Phase II Construction Price Proposal requirements shall be in accordance with the Agreement and Exhibit B Phase I Preconstruction Services Scope of Work of the Agreement.

In the event any cost estimate or the Phase II Construction Price Proposal for the Project or any Bid Package exceeds any prior Cost Estimate Submittal or Cost Model previously submitted to the Owner, if the Owner so directs, the CMAR and the Engineer shall:

- Attend Cost Alignment and Consensus Meetings (Subtask 2.6) with the Owner and the Engineer as may be necessary, in the Owner's judgment, to reach a consensus as to the manner of maintaining the Phase II Construction Price Proposal within the construction budget, cost estimates, and cost models previously approved by the Owner for the Project or applicable Bid Package.
- Work together to bring the Project and/or applicable Bid Package back within the Cost Estimate Submittal and cost models previously approved by the Owner through means and methods, value engineering, related cost reduction recommendations, and acceptable alternates or other means appropriate to reduce the cost.

When requested by the Owner, undertake an analysis of any proposed redesign of the Project or applicable Bid Package to bring the cost of the Project or applicable Bid Package back within the Cost Estimate Submittal and cost models previously approved for the Project or applicable Bid Package.

PART A.2 - COST ESTIMATE SUBMITTAL REQUIREMENTS

2.1 Organization of the Cost Estimate Submittal

CMAR shall prepare each Cost Estimate Submittal containing the following components in the following order:

- Cost Estimate Summary Memorandum
- Supplement 1 – Cost Model
- Supplement 2 – Assumptions and Exclusions
- Supplement 3 – Subcontractor and Supplier Estimates and/or Bids
- Supplement 4 – Allowance Items
- Supplement 5 – CMAR Contingency Costs Support Information
- Supplement 6 – General Conditions Costs Support Information
- Supplement 7 – Start-up, Commissioning, and Acceptance Testing Costs Support Information
- Supplement 8 – Updated Letter from Surety
- Supplement 9 – Updated Construction Schedule

CMAR shall submit to Owner and Engineer an electronic copy in searchable Adobe PDF format. CMAR shall also submit Supplement 1, if requested by Owner, in Microsoft Excel with traceable formulas.

The following subsections describe in detail the information to be provided within each Cost Estimate Submittal component.

2.2 Cost Estimate Summary Memorandum

The Cost Estimate Summary Memorandum shall consist of a narrative summary of the cost estimate that includes, at a minimum, the following:

- Summary of costing activities since the previous Cost Estimate Submittal.
- Changes subsequent to the previous cost estimate and reasons for the changes. Changes should be clearly denoted between the current cost estimate and the prior cost estimate. CMAR shall address outcome of estimated Work items relative to its escalation trend tracking efforts.
- Response to Owner's comments on prior Cost Estimate Submittal.
- List of proposed major equipment with the procurement status for each. The procurement status should include supplier pre-qualification activities and suppliers pre-qualified to-date.
- List of proposed construction package subcontracts with the procurement status for each. The procurement updates should include subcontractor pre-qualification activities and subcontractors pre-qualified to-date.
- Describe process for selecting and including subcontractor, materials, and equipment prices in cost model, and impact of such pricing on project costs.
- Current contingency value and the approach to determining the value. Describe basis for escalation value and provide support information that justifies escalation value. Discuss any opportunities to mitigate the impacts of escalation.
- Provide overview of work to be self-performed, reasons/rationale/benefits for self-performed work, description of what is included in self-performed work areas, and explanation of how CMAR meets requirements for self-performance, if any.
- A cost summary table similar to Table A-1. The GMP is the cost that CMAR estimates to complete the Construction. The GMP will be the basis for the Phase II Construction Price in the Phase II Construction Price Proposal.

Table A-1 – CMAR Cost Summary for FY26 CMAR Reservoir Rehab Program		
Cost Element	60% Design	90% Design
<u>Direct Costs</u>		
Construction Costs		
Allowances		
<i>Subtotal Direct Costs (A)</i>		
<u>CMAR Contingencies</u>		
Escalation of Labor and Material		
CMAR Risks		
Trade Buy-Out Differentials		

<i>Subtotal Contingency (B)</i>		
<u>Indirect Costs</u>		
General Conditions Payment		
Start-up, Commissioning, & Acceptance Testing		
Insurance		
Bonds		
<i>Subtotal Other Indirect Costs (C)</i>		
Construction Cost of Work (A+B+C)		
<u>CMAR's Fee (D)</u>		
Total GMP Cost (A+B+C+D)		
Sales Tax		

2.3 Supplements

The CMAR shall update the supplements described below for each submission to reflect design progression and refinement of Project during Preconstruction Services Phase. Such supplements shall be included in the Phase II Construction Price Proposal.

Supplement 1 – Cost Model

1. Supplement 1 shall include a line-item cost breakdown of all CMAR costs, including all labor, materials, subcontractor, and supplier cost elements consistent with Association for the Advancement of Cost Design Engineering - International (AACEi) practices. The organization of the CMAR's cost model should follow the organization of Table A-1 such that all costs are accurately accounted for.
2. The direct costs shall be organized by each designated facility/area. The facility/area designations will be agreed upon by the Owner, Engineer, and CMAR.
3. For work performed by the CMAR (i.e., self-performance), direct costs should be distinguished as such and should be presented in conformance with Construction Specifications Institute (CSI) MasterFormat 2004 Edition, with a category for each Division.
4. The Divisions may change depending on the CSI MasterFormat Edition being used for the Project and as approved by the Engineer and Owner.
5. An example cost model format is provided in Table A-2 below. The cost model format by CMAR does not need to match the example exactly but rather the level of detail and intent reflected in the example.
6. General Conditions Costs (typically considered Division 1 Specifications – General Requirements) shall be those costs according to a breakdown approved by the Owner. A separate line item shall be included for costs associated with each of the CMAR supervisory and administrative personnel.

7. For work not performed by the CMAR (e.g., competitively bid, subcontracted or vendor supplied), corresponding direct costs should be delineated as such and do not have to be presented in the CSI format. If a quote or bid is received for a particular cost element (e.g., major equipment, subcontracted work package), the cost model line item shall correspond to the quotes and bids provided in Supplement 3 of the Cost Estimate Submittal (ex., line item cost for concrete material shall correspond to the bid price provided by selected concrete supplier). Line-item costs shall include all applicable taxes and fees (not including New Mexico State Sales Tax).
8. The total cost reflected in the cost model shall equal the Total Phase II Construction Price provided in the Cost Estimate Summary Memorandum.
9. The cost model should include listing of vehicles, material/hoisting equipment and other construction-related equipment required to complete the scope of the Project.

FY26 CMAR Reservoir Rehab Program

Table A-2 – Example of Cost Model Format[illegible]

Supplement 2 – Assumptions and Exclusions

1. Supplement 2 shall include a list of all assumptions, clarifications, and exclusions that CMAR used to determine the project costs.
2. Assumptions, clarifications, and exclusions which are contrary to an express contract term shall not be used in interpreting the rights and obligations of the parties under the Agreement.
3. Provide table of specific items excluded from estimate that are either the responsibility of the Owner or for other reason.
4. Provide table of Assumptions and Clarifications (includes identification of scope gap items and other assumptions/clarifications used to develop the cost estimate; include those items that document what is assumed to be included in the estimate that is not necessarily reflected in Drawings and Specifications; include clarifications on quantities and unit costs utilized).
 - General Assumptions/Clarifications.
 - Sitework and Yard Piping Assumptions.
 - Concrete Assumptions.
 - Metals Assumptions.
 - HVAC and Plumbing Assumptions.
 - Exposed Process Piping and Mechanical Assumptions.
 - Electrical and I&C.
 - SCADA/Programming.

Supplement 3 – Subcontractor and Supplier Estimates and/or Bids

1. Supplement 3 shall include a copy of all subcontractor and supplier quotes or bids received by CMAR. The quotes and bids shall be organized by facility/area and/or bid package. A summary sheet shall be provided for each bid package listing the supplier/subcontractor that provided quotes/bids, the price from each quote/bid, the supplier/subcontractor selected or recommended, the reason for selection (i.e., low bid, best-value, etc.), and any scope deficiencies (scope gap/exclusions) and corresponding cost estimate for the deficiencies (as estimated by the CMAR). One summary sheet of the bid evaluations can be used for each bid package. Quotes and bids from respective subcontractors and suppliers shall explicitly describe the scope of services associated with the quote or bid (including assumptions, exclusions, and clarifications), and shall include a quantity and unit price breakdown of primary work elements.
2. It is expected that as the design progresses (e.g., 60% Design to 90% Design) most supplier and subcontractor bids will be obtained by CMAR, rather than estimates/quotes, and will be used as the basis for the Cost Estimate Submittal.
3. Equipment or subcontracts that have a purchase price not greater than \$250,000

may be procured directly without soliciting competitive bids. For such equipment or subcontracts, the CMAR shall provide, for each piece of major equipment or bid package, documentation listing the purchase price of three (3) similar systems or bid packages procured within 24 months.

Supplement 4 – Allowances

1. Supplement 4 shall include a detailed description of each allowance item proposed by CMAR along with a proposed cost for each allowance item. Each allowance item description shall consist of a summary description of the allowance item, an itemized list of scope items included within allowance item, and any specific and applicable exclusions to allowance item.

Supplement 5 – CMAR Contingency Support Information

1. Supplement 5 shall include a breakdown of CMAR contingencies consisting of:
 - a. Escalation of materials and goods; and
 - b. CMAR risks;Supplement 5 shall contain all financial and probability-of-occurrence analysis and other support information that was used by CMAR to determine the value of the contingencies.
2. For escalation contingencies, the CMAR shall detail the escalation approach and methodology used for determining materials and goods escalation over the Project duration. Escalation for equipment, supply contracts, and subcontracts should not be included within the escalation contingency if such costs were included within the subcontract and equipment packages (e.g., proposers were required to include escalation in its pricing).
3. For CMAR risk contingencies, a Risk Register in accordance with Phase I Preconstruction Services Scope Work and/or risk model of all Project risks assumed by CMAR shall be included with a corresponding monetary value associated with each risk. The Risk Register and/or model shall include risk description, risk likelihood/probability, consequence of occurrence (monetary value/cost), mitigation approach, and risk assignment. A copy of the risk model will be provided to the Owner. Risk Register scope is described in Subtask 1.3.
4. The monetary value of the contingencies shall equal the CMAR Contingency amount provided in the Cost Estimate Summary Memorandum.

Supplement 6 – General Conditions Costs Support Information:

1. Supplement 6 shall include information to support the general conditions costs

provided in the cost model. More detail for general conditions is provided in the Division 1 Specifications
– General Requirements.

2. The CMAR shall provide an organizational chart of its Construction Phase staff and a person-hour analysis including costs of base wages or salaries of supervisory and administrative personnel of the CMAR that support the General Conditions. Supervisory and administrative personnel include the Project Manager, Superintendent, Project Design Professional, Project Administrator, Scheduler, and Field Design Professional. Rates shall be as provided with Price Proposal or otherwise agreed upon by Owner.
3. The CMAR shall include cost information for developing and maintaining the Health and Safety Program as defined by its Owner-approved Health and Safety Plan for Construction Services (Subtask 1.5).
4. The CMAR shall include cost information for administration and management of the Project, developing the field office and supply costs for CMAR staff, at a minimum:
 - CMAR field office mobilization and demobilization.
 - Office trailer rental.
 - Office furniture and equipment.
 - Office janitorial.
 - Document reproduction services (off-site or custom).
 - Copy machines, fax machines, printers, scanners, and paper shredders.
 - Office computers, software, and maintenance.
 - Office telephones, and telephone and internet service.
 - Accounting and data processing costs.
 - Jobsite radios/cellular phones.
 - Postage, courier, and express delivery.
 - Scheduling expenses and job meeting expenses.
 - Job travel, including fuel and vehicle.
 - Temporary parking and laydown areas.
 - Storage facilities, both on and off site, as appropriate.
 - Tools and toolshed.
 - Surveying equipment and supplies.
 - Office supplies.
 - Project specific signage.
 - Reference manuals.
 - Employee identification system.
 - Business licenses and fees.

5. The CMAR shall include cost information, at a minimum, for developing the temporary amenities for CMAR Project Site activities:
 - Facilities for drinking water and sanitation to support field offices
 - Provide fire protection, site security, power generation, communications, and appropriate lighting for temporary facilities
 - Traffic control equipment rental
 - Temporary weather protection facilities
 - Fencing, barricades, partitions, and protected walkways
 - Site erosion control
6. CMAR shall include cost information to implement its Quality Assurance/Quality Control Program in accordance with its Owner approved Quality Management Plan (Subtask 1.5.2). Provide assumptions and basis used to develop quality control testing costs as needed to support Construction Services (provide breakdown of cost estimate).
7. CMAR shall include cost information for maintaining a clean Project site through the Project duration, which includes daily site cleanup and dumpsters, Cleanup at Substantial Completion, and Cleanup at Final Completion.
8. CMAR shall include cost information to visually document Project progress using photographs and videos.

Supplement 7 – Start-up, Commissioning and Acceptance Testing Costs Support Information

1. Supplement 7 shall include information to support the start-up, commissioning, and acceptance testing costs provided in the cost model.
2. The CMAR shall provide an organizational chart of its start-up, commissioning, and acceptance testing staffs; a conceptual plan for performing these activities; and person-hour and cost analysis for the associated activities.
3. The CMAR shall provide the costs elements for warranty periods following Substantial Completion.
4. Costs shall support the Owner-approved Commissioning Plan (Subtask 1.5.4)

Supplement 8 – Updated Letter from Surety:

1. Supplement 8 shall include an updated letter from the surety (or sureties) verifying that CMAR has sufficient bonding capacity available for the Project based on the current cost estimate.

Supplement 9 – Updated Final Design and Construction Schedule:

1. Supplement 9 shall include an updated summary-level (i.e., roll-up) schedule for the Construction Phase (Phase II) in accordance with Preconstruction Services Scope of Work that should be consistent with the completion durations included

in the cost model all direct costs (by facility/area) and indirect costs (i.e., General Conditions).



PHASE I - NOTICE TO PROCEED

CONTRACTOR: Smithco Construction, Inc.

ADDRESS: PO Box 45, Caballo, NM 87931

PROJECT NAME: FY26 Reservoir Rehabilitation

1 Contract Time 18 Months

2 Date Contract Time Begins _____

Commented [AM24]: Need start date

You are hereby given notice to proceed with construction of the above-referenced project on the day fixed above for the beginning of the contract time.

Contractor should acknowledge receipt of this form by signing below and return to consultant or project manager.

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SMITHCO CONSTRUCTION, INC.
CP2026000002 FY26 RESERVOIR REHABILITATION
PROJECT NO. TBD
C0000891
Water Collaborative Delivery Association |
CMAR Agreement

CCN: TBD© 2023

RECEIVED AND ACCEPTED

Contractor Date

Instructions:
1. Items shown in brackets and blue text are to be updated as applicable during Phase II Construction Price negotiations.

EXHIBIT E – PHASE II CONSTRUCTION PRICE AMENDMENT
FOR FY26 CMAR RESERVOIR REHAB PROGRAM



Albuquerque Bernalillo County
Water Utility Authority

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

SMITHCO CONSTRUCTION, INC.
CP2026000002 FY26 RESERVOIR REHABILITATION
PROJECT NO. TBD
C0000891
Water Collaborative Delivery Association |
CMAR Agreement

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FY26 CMAR Reservoir Rehab Program

SMITHCO CONSTRUCTION, INC.
CP2026000002 FY26 RESERVOIR REHABILITATION
PROJECT NO. TBD
C0000891
Water Collaborative Delivery Association |
CMAR Agreement

CCN: TBD@2023

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Exhibit E
Phase II Construction Price Amendment

Effective Date of this Amendment:	
Effective Date of CMAR Construction Agreement and General Conditions:	
Owner:	
CMAR:	
Facility:	
Project:	
Project No.:	
Contract No.:	

This Phase II Construction Price Amendment (this “Amendment”) is entered into pursuant to Article 1.15 of Exhibit B (Phase I Preconstruction Scope of Services) of that certain Construction Agreement with an Effective Date referenced above (the “Agreement”), by and between the Owner and the CMAR, for the Project identified in the Agreement. The Agreement is supplemented by, among other things, the General Conditions between the Owner and the CMAR dated the Effective Date and attached to the Agreement (the “General Conditions”). The Owner and CMAR desire to establish a Phase II Construction Price for the Work defined and described below and in the other Contract Documents relating to such Work. This Amendment, when accepted by the Owner, shall be a Contract Document and part of the Agreement for all purposes. To the extent there exists any conflict between this Amendment and the Agreement, this Amendment shall govern and control the respective rights, duties, and obligations of the Parties hereto with regard to the Scope of the Work, Phase II Construction Price (including Cost of the Work and CMAR’s Fee where applicable), Owner’s Contingency and CMAR’s Contingency (where applicable; such CMAR Contingency being a part of the Cost of the Work), Owner Allowances, and the terms, provisions, and conditions of Attachments [1-25] attached hereto and incorporated herein by this reference, including any CMAR exclusions mutually agreed upon by the CMAR and the Owner. Capitalized terms used herein but not defined herein shall have the meanings given them in the Agreement, General Conditions, and other Contract Documents.

3. ARTICLE 1 — Phase II Construction Price Amendment

SMITHCO CONSTRUCTION, INC.
 CP2026000002 FY26 RESERVOIR REHABILITATION
 PROJECT NO. TBD
 C0000891
 Water Collaborative Delivery Association |
 CMAR Agreement

CCN: TBD© 2023

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This Phase II Construction Price Amendment includes the following documents attached hereto and incorporated by this reference:

- Attachment 1 Scope of the Work
- Attachment 2 Phase II Construction Price and Construction General Conditions Cost Summaries in a Form Developed by Owner and CMAR
- Attachment 3 Schedule of Values
- Attachment 4 Project Construction Schedule
- Attachment 5 Construction Drawings and Specifications for the Work
- Attachment 6 List of Allowances
- Attachment 7 Subcontractor Procurement Plan
- Attachment 8 Performance Testing Protocols
- Attachment 9 Commissioning Protocols
- Attachment 10 Phase II Notice to Proceed
- Attachment 11 Project Technical Performance Requirements
- Attachment 12 Phase II Technical Scheduling Requirements
- Attachment 13 Submittal Specifications
- Attachment 14 CMAR's Hourly Rate Schedule
- Attachment 15 Escrow Agreement
- Attachment 16 Insurance and Bond Requirements
- Attachment 16.1 Owner's/Contractor's Controlled Insurance Program
- Attachment 17 Payment Bond Form
- Attachment 17.1 Performance Bond Form
- Attachment 18 Supplemental Conditions
- Attachment 19 SBE, MBE, WBE, DBE, LBE Requirements
- Attachment 20 Federal, State, or Local Procurement Guidelines
- Attachment 21 Davis-Bacon and Other Wage Requirements

SMITHCO CONSTRUCTION, INC.
CP2026000002 FY26 RESERVOIR REHABILITATION
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CMAR Agreement

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Attachment 22 Insurance Certificates

Attachment 23 CMAR Schedule of Qualifications, Assumptions, Clarifications, and Exclusions

Attachment 24 Sales, Consumer, Use, and Similar Taxes for the Work included in the Phase II Construction Price

Attachment 25 Equipment Rates

Other [\[LIST\]](#)

4. ARTICLE 2 — The Work

The Work to be performed under this Amendment is limited to the construction and completion of the Work and improvements described in **Attachment 5** attached hereto, in strict accordance with the Contract Documents, subject only to the CMAR's Schedule of Qualifications, Assumptions, Clarifications, and Exclusions attached as **Attachment 23** hereto.

5. ARTICLE 3 — Contract Time and Liquidated Damages

5.1. Substantial and Final Completion

The CMAR shall achieve Substantial Completion of all Work under the Contract Documents within [\[NUMBER\]](#) days (the "Contract Time") from the Commencement Date. The "Commencement Date" shall be the later of: (a) the issuance of a Phase II Notice to Proceed by the Owner with the Construction Phase Work, or (b) the Effective Date of this Amendment. The final day of the Contract Time shall be the "Substantial Completion Date." The CMAR shall achieve Final Completion of all Work and the Punch List within [\[NUMBER\]](#) days after the Substantial Completion Date (the "Close-Out Period"). The final day of the Close-Out Period shall be the "Final Completion Date." The Contract Time, Commencement Date, Substantial and Final Completion Dates, and other milestones for performance of the Work, including critical path items, are more particularly described in the Project Construction Schedule attached hereto as **Attachment 4**.

5.2. Notwithstanding Article 3.1 of this Amendment, the Owner may designate separate periods of time and dates of Substantial Completion of discrete phases of the Project, in which case, each phase shall have a separate number of days from the Commencement Date to achieve Substantial Completion, and a separate Final Completion Date, and designated Close-Out Period.

- 5.3. Pursuant to Article 5.4 of the Agreement, the CMAR shall pay the Owner as liquidated damages and not as a penalty the sum of \$[NUMBER] per day of each day of unexcused delay past the Substantial Completion Date. [If separate Substantial Completion dates are established for discrete phases of the Project, liquidated damages may be stipulated for each.] The CMAR shall pay the Owner as liquidated damages the sum of \$[NUMBER] per day of each day of unexcused delay past the Final Completion Date.

6. ARTICLE 4 — Phase II Construction Price

- 6.1. As full consideration for performance and furnishing of the Work, and subject to the other terms and conditions of the Contract Documents, the Owner shall pay the CMAR the following (the “Phase II Construction Price”) **(check applicable box)**:
- 6.1.1. ☐ The Lump-Sum Contract amount of \$[NUMBER]; subject to Change Orders and other applicable provisions of the Contract Documents and this Amendment that permit or require an increase in the Lump-Sum Contract amount.
- 6.1.2. ☐ An amount equal to the Cost of the Work (defined below) plus the CMAR’s Fee (defined below) paid in proportion to the Work performed, provided, however, the CMAR guarantees that the sum of the Cost of the Work and the CMAR’s Fee shall not exceed \$[NUMBER] (the “GMP” or “Guaranteed Maximum Price”). The Guaranteed Maximum Price is the amount beyond which the Phase II Construction Price may not exceed, subject to Change Orders and other applicable provisions of the Contract Documents and this Amendment that permit or require an increase in the GMP.
- 6.1.3. ☐ Any authorized amount of Allowances as detailed in **Attachment 6** of this Phase II Construction Price Amendment.
- 6.2. The compensation to be paid shall be limited to the Phase II Construction Price established pursuant to this Amendment, as the same may be adjusted under applicable provisions of the Contract Documents and this Amendment. To the extent the CMAR’s cost to complete the Work exceeds the Lump-Sum Contract amount described in Article 4.1.1 above (in cases where a Lump Sum Phase II Construction Price has been selected by the Parties) or the Cost of the Work plus the CMAR’s Fee exceeds the Guaranteed Maximum Price (in cases where a GMP Phase II Construction Price has been selected by the Parties in accordance with Article 4.1.2 above), as modified, the CMAR shall bear such costs in excess of the applicable Phase II Construction Price without reimbursement or additional compensation from the Owner.

6.2.1. Payment for Work performed shall be as set forth in Article 8 of the General Conditions.

6.3. CMAR Fee

The Fee ("CMAR's Fee" or "Fee") payable by the Owner to the CMAR equals \$[NUMBER] or [NUMBER]% of the Cost of the Work and is included in, and a part of, the Phase II Construction contract price agreed upon by the Owner and the CMAR pursuant of this Amendment. The CMAR's Fee includes all the CMAR's home office overhead and profit. Construction General Conditions Costs are an element of the Cost of Work and are not included in the CMAR's home office overhead.

6.3.1. Adjustment in the CMAR's Fee shall be made as follows pursuant to written agreement by both parties:

6.3.1.1. The CMAR's Fee of [NUMBER]% of the Cost of the Work shall be multiplied by the Cost of the Work included in additive changes in the Work as provided in Article 7 of the Agreement and Article 7 of the General Conditions, and such CMAR Fee, together with the Cost of the Work reflected in such additive change in the Work shall be added to the GMP. Deductive Change Orders shall result in a corresponding decrease in the CMAR's Fee.

6.3.1.2. For delays in the Work not caused by the CMAR, except as provided in Article 5.3 of the Agreement and Article 5 of the General Conditions, in all situations in which (a) the Phase II Construction Price is based on the Cost of the Work plus the CMAR's Fee (with or without a GMP), the Phase II Construction Price shall be increased by the increase in the Cost of the Work (including Construction General Conditions Costs [hereinafter defined]) resulting from such delay, plus CMAR's Fee on such increased Cost of the Work; and (b) the Phase II Construction Price is based on a Lump-Sum Contract amount, there [shall / may] be an equitable adjustment in the Phase II Construction Price resulting from such delay, including an increase in the Cost of the Work impacted by such delay, increased Construction General Conditions Costs thereon, and CMAR's overhead and profit on such increased costs.

6.3.1.3. In the event the Owner issues a Field Order or Owner Change Directive, as defined in Article 1 of the Agreement, compensation to the CMAR will be as follows:

6.3.1.3.1. Lump sum, with appropriate documentation, if agreed to by the Parties; or

6.3.1.3.2. In the absence of such an agreement, Cost of the Work plus a Fee of [NUMBER]%.

6.3.1.4. If the CMAR is retained by the Owner pursuant to a separate written agreement to undertake construction or replacement of an insured or uninsured loss, the CMAR shall be paid an additional fee in the same proportion that the CMAR's Fee bears to the estimated Cost of the Work for the replacement.

6.3.1.5. For the CMAR's Contingency used as provided for in Article 10 of this Amendment, the CMAR's Fee of [NUMBER]% will be applied but only after the time such CMAR Contingency is used and not beforehand.

7. ARTICLE 5 — Cost of the Work

The Cost of the Work ("Cost of the Work"), when determining the Phase II Construction Price based on a GMP, consists of all costs incurred in connection with the Work, including, without limitation, the following, unless such items are expressly stated to be excluded costs:

7.1. Wages and salaries including payroll taxes and benefits paid for labor in the direct employ of the CMAR in the performance of the Work, including compensation for craft or trade labor performed by CMAR's personnel.

7.2. Construction General Conditions Costs, as negotiated between the Owner and the CMAR.

7.3. Without duplication of the Construction General Conditions Costs, cost of all employee benefits and taxes, including, but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, training, drug testing, and other nonprofit sharing or non-retirement benefits as required by law, labor agreements, or paid under the CMAR's standard personnel policy, to the extent such costs are based on wages and salaries of CMAR's employees included in the Cost of the Work under Articles 5.1 and 5.2 hereof. Holidays and vacations are excluded from payroll taxes and other employee benefits and shall be billed directly to the Project and considered reimbursable under the terms of the Contract Documents. Payroll taxes, insurance, and other benefits of the CMAR's non-exempt hourly employees are not included in the CMAR's hourly rate schedule, attached to this Amendment as **Attachment 14**.

- 7.4. Reasonable transportation, travel, hotel, and moving expenses of the CMAR personnel incurred in connection with the Work.
- 7.5. Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner; transportation, storage, and handling.
- 7.6. Payments made by the CMAR to Subcontractors for work performed under the Contract Documents.
- 7.7. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed, that remain the property of the CMAR.
- 7.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether provided by the CMAR or rented from Others, in each case agreed-upon rates in effect in the market in which the Project is located and including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at the aforementioned agreed-upon rate(s). In the case equipment is provided by CMAR rates shall be included in **Attachment 25 - Equipment Rates**.
- 7.9. Cost of the premiums for all insurance and surety bonds which the CMAR is required to procure or deems necessary, including major Subcontractors and equipment system suppliers, and as approved by the Owner, including any additional premium incurred because of any increase in the GMP.
- 7.10. Sales, use, gross receipts, or other taxes, tariffs, duties, or impositions or exactions related to the Work for which the CMAR is liable.
- 7.11. Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the CMAR is not responsible as set forth in Articles 3.4.4 and 9.8 of the General Conditions, and deposits lost for causes other than the CMAR's negligence.
- 7.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a period of [NUMBER] days following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from the gross negligence or willful misconduct of the CMAR.

- 7.13. All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.
- 7.14. All costs associated with demobilizing and remobilizing the field office and the CMAR's workforce, including Subcontractor workforces, because of a suspension of the Work by the Owner.
- 7.15. Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone (including cell phone) service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.
- 7.16. All water, power, heating, fuel, chemicals for commissioning, and other utility costs necessary for the Work.
- 7.17. Cost of removal of all nonhazardous substances, debris, and waste materials.
- 7.18. Costs incurred due to an emergency affecting the safety of persons or property.
- 7.19. Costs related to the Work for safety, OSHA, EEO, and other regulatory reporting as well as Project time, personnel, and data records and reports. Payment of OSHA fines of the CMAR or its Subcontractors is not an allowable Cost of Work.
- 7.20. Additional costs resulting from laws, ordinances, rules, regulations, and taxes enacted after the date of the Contract Documents.
- 7.21. Self-insured retentions and deductibles resulting from any insured loss or casualty.
- 7.22. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the CMAR's fee as set forth in Article 4 hereof.
- 7.23. Any Contingencies identified and selected in Article 10 hereof, excluding, however, any Owner Contingency.
- 7.24. Allowances, when authorized, become a part of the Cost of the Work. Allowances are not included in the CMAR's Contingency. If an Allowance is projected to be exceeded, the Owner shall be required to fund the additional incremental cost and the contract price shall be adjusted accordingly. The initial list of Allowances is included as **Attachment 6** of this Phase II Construction Price Amendment.

8. ARTICLE 6 — Excluded Costs

The Cost of the Work, when determining the Phase II Construction Price based on a GMP, does not include:

- 8.1. Salaries and other compensation of CMAR's personnel stationed at CMAR's principal office or offices other than the Site office, except as specifically provided in Article 5.3 hereof and/or other costs and expenses that are not necessary to execute, or do not otherwise support, the Work.
- 8.2. Except only to the extent that the costs enumerated in this Article 6.2 are covered by the Builder's Risk Policy of insurance required by the Contract Documents and the proceeds of such policy are actually paid to the Owner on account of such costs.
- 8.3. Costs incurred due to the gross negligence or willful misconduct by the CMAR, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whom they are liable, or to the failure of the CMAR to fulfill a specific responsibility to the Owner set forth in the Contract Documents.
- 8.4. Legal, mediation, and arbitration fees and costs arising from disputes between the Owner and the CMAR.
- 8.5. Costs that would cause the Guaranteed Maximum Price to be exceeded.

9. ARTICLE 7 — Discounts

☐ **Check if applicable** (only applies to GMP Contract pricing). All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner.

10. ARTICLE 8 — Schedule of Values

The Phase II Construction Price shall be broken out on the Schedule of Values, to be attached to this Amendment as **Attachment 3**, and shall reflect all requirements of the Contract Documents.

11. ARTICLE 9 — Interest on Past Due Payments

Amounts unpaid more than [NUMBER] days after the invoice date shall bear interest at [INSERT RATE] interest rate in effect on the date hereof in the state in which the Project is located unless otherwise agreed to by the Owner and the CMAR pursuant to a written Change Order.

12. ARTICLE 10 — Contingency

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The following Contingencies are hereby established by the Owner and the CMAR, shall be included in the Cost of the Work (where applicable), and shall be held, used, and disbursed in accordance with this Article 10 (**check applicable box(es)**):

- 12.1. ☐ A CMAR Contingency in the amount of [\$NUMBER] [NUMBER% OF THE COST OF THE WORK] for use by the CMAR for Rework or Work covered up prior to inspection. Such Contingency may be drawn upon by the CMAR at any time for any reason.
- 12.2. ☐ Separate Owner Contingency and CMAR Contingency. The amount of the CMAR Contingency and, where applicable, Owner Contingency, shall be as follows:
- 12.2.1. For Owner Contingency, the sum of [\$NUMBER] [NUMBER% OF THE COST OF THE WORK].
- 12.2.2. For CMAR Contingency, the sum of [\$NUMBER] [NUMBER% OF THE COST OF THE WORK], which is available for the CMAR's exclusive use, including for unanticipated costs it has incurred that are not the basis for a Change Order.
- 12.2.3. The status of the CMAR Contingency and Owner Contingency shall be reported by the CMAR to the Owner at the following Schedule milestones:
_____.
- 12.3. Unused CMAR Contingency on Work remaining at Final Completion of the Work shall be treated as follows: _____.
- 12.4. As used in this Article 10, "Owner Contingency" means the dollar amounts set forth in the Preconstruction Phase and Construction Phase budgets for the Project and is outside of and not included in the Phase II Construction Price and used and controlled solely and exclusively by the Owner for the Owner's sole and exclusive use on the Project.
- 12.5. As used in this Article 10, the "CMAR Contingency" means the dollar amount set forth in Article 10.1 or Article 10.2.2 hereof for cost the CMAR incurs as a result of any unforeseen event or circumstance that are not the basis for a Change Order, and other costs and expenses not included in a Change Order but reimbursable as a Cost of the Work or Lump Sum Phase II Construction Price, as applicable. Adjustments to the amount of the CMAR Contingency and the milestones, if any, for release of unused CMAR Contingency, if any, are as set forth in Article 10.5.1 hereof. In no event shall the CMAR Contingency be used for Owner-directed changes in the Scope of the Work or the design for the Project.

12.5.1. The CMAR shall track, report, and reconcile the CMAR Contingency and any savings (where applicable) to the Owner on each pay application. Where applicable, at each of the milestones described in Article 10.2.3 above or as follows: [] (complete or state "N/A" as applicable), any savings realized by the CMAR in the Cost of the Work and other services provided by the CMAR hereunder for the period covered thereby shall be added to the CMAR's Contingency and a report shall be prepared and provided by the CMAR to the Owner identifying the amount of savings and any additions or subtractions made to the CMAR's Contingency, in each case in accordance with this Amendment. Unless otherwise provided to the contrary herein, the CMAR Contingency does not include the CMAR's Fee (where applicable), which shall be added to the CMAR Contingency to reach the GMP. The CMAR Contingency will be allocated to specific line items in the Schedule of Values through the use of a Contingency Expenditure (each a "Contingency Expenditure") signed by the Owner and the CMAR, including a description of the items covered by the CMAR Contingency Expenditure. The allocation of the CMAR Contingency shall not increase the GMP or Lump Sum Phase II Construction Price, as applicable, and in no event shall the CMAR be entitled to any increase in the GMP or Lump Sum Phase II Construction Price, as applicable, for any phase or the Project as a whole beyond that established by this Amendment in any case or circumstance where the CMAR has exhausted the entire CMAR Contingency and has not previously obtained the Owner's prior written agreement to any such increase.

12.5.2. The Owner shall not unreasonably withhold approval of a Contingency Expenditure to use the CMAR Contingency so long as (a) the Contingency amount accessed does not cause the GMP or Lump Sum Phase II Construction Price, as applicable, to be exceeded, and (b) the CMAR uses the CMAR Contingency for items required for the Project that are recoverable as part of the Work under the Contract Documents, but do not justify an increase in the GMP or Lump Sum Phase II Construction Price, as applicable.

12.5.3. Any unused CMAR Contingency remaining at Substantial Completion of the Project shall be treated as follows: []
[]

13. ARTICLE 11 — Savings

☐ Check if applicable. ☐ Check if not applicable. Where a GMP has been selected by the Parties in accordance with Article 4.1.2 hereof, if the sum of the actual Cost of the Work and the CMAR'S Fee is less than the GMP, as such GMP may have been adjusted over the

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course of the Project, the net positive difference (“savings”) shall be shared as follows: [NUMBER]% to CMAR and [NUMBER]% to the Owner. In such event, savings shall be calculated and paid as part of the Final Payment under Article 14 of this Amendment and Article 8.9 of the General Conditions, with the understanding that to the extent the CMAR incurs costs after Final Completion that would have been payable to the CMAR as a Cost of the Work, the Parties shall recalculate the savings considering the costs so incurred, and the CMAR shall be paid by the Owner accordingly. Unless otherwise agreed to in writing by the Owner and the CMAR, unused CMAR Contingency remaining at Final Completion of the Work shall be disbursed in accordance with Article 10.3 hereof.

14. ARTICLE 12 — Early Completion Bonus

☐ Check if applicable. ☐ Check if not applicable. If the CMAR substantially completes the Work prior to the Substantial Completion Date in accordance with the terms and provisions of the Agreement and other Contract Documents, the CMAR shall be paid on the Final Completion Date an early completion bonus in the amount of \$[NUMBER] per day for each day the Project was completed prior to the Substantial Completion Date. Such bonus shall be subject to a maximum cap of \$[NUMBER].

15. ARTICLE 13 — Not Used

16. ARTICLE 14 — Final Payment

Final payment of the balance of the Phase II Construction Price (“Final Payment”) shall be made to the CMAR within [NUMBER] days after the CMAR has applied for Final Payment, including submissions required under Article 8.9.3 of the General Conditions.

17. ARTICLE 15 — Fee for Termination for Convenience

Check applicable box.

17.1. ☐ A fixed termination fee in the amount of [NUMBER]% of the Phase II Construction Price.

17.2. ☐ A termination fee calculated as follows: [_____].

17.3. ☐ No termination fee shall be due or payable.

18. ARTICLE 16 — Dispute Resolution

The method of dispute resolution shall be as selected in the General Conditions.

19. ARTICLE 17 — Miscellaneous

Except as modified herein, the Agreement remains in full force and effect.

- 19.1. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures hereon shall be deemed originals for all purposes.

Executed as of the Effective Date.

OWNER

CMAR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

LEGAL

By: _____

Name: _____

Title: _____

Dated: _____

Attachment 1—Scope of the Work

Attachment 2—Phase II Construction Price and Construction General Conditions Cost Summaries

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Attachment 3—Schedule of Values

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Attachment 4—Project Construction Schedule

Attachment 5—Drawings and Specifications for the Work

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Attachment 6—List of Allowances

Attachment 7—Subcontractor Procurement Plan

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Attachment 8—Performance Testing Protocols

Attachment 9—Commissioning Protocols

Attachment 10—Phase II Notice to Proceed

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Attachment 11—Project Technical Performance Requirements

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Attachment 12—Phase II Technical Scheduling Requirements

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Attachment 13—Submittal Specifications

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Attachment 14—CMAR’s Hourly Rate Schedule

Attachment 15—Escrow Agreement

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Attachment 16—Insurance and Bond Requirements

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Attachment 16.1—Owner’s/Contractor’s Controlled Insurance Program

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Attachment 17—Payment Bond Form

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Attachment 17.1—Performance Bond Form

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Attachment 18—Supplemental Conditions

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Attachment 19—SBE/MBE/WBE/DBE/LBE Requirements

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Attachment 20—Federal, State, or Local Procurement Guidelines

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Attachment 21—Davis-Bacon and Other Wage Requirements

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Attachment 22—Insurance Certificates

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Attachment 23—CMAR Schedule of Qualifications, Assumptions, Clarifications, and Exclusions

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Attachment 24—Sales, Consumer, Use, and Similar Taxes for the Work Included in the Phase II Construction Price

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Attachment 25—Equipment Rates



Memo

To: Mark S. Sanchez, Executive Director
Ege Richardson, Chief Engineer

From: Hudson White, Administrative Specialist *HW*

Through: Candida Kelcourse, Purchasing Officer *OK*
Armida Magallanes, Purchasing Administrator *AM*

Date: 07/08/2025

Re: CMAR Selection Committee for CQ2026000001: Reservoir Rehab Program

The following individuals are recommended to serve as members of the CMAR Selection Committee ("Committee") for the CMAR Request for Qualifications for "Reservoir Rehab Program". This Committee will review and evaluate qualifications/proposals and submit a ranked list of offerors to you for selection.

- Ege Richardson, Committee Chair
- German Andrade, Member
- Amelia Symonds, Member
- Angelo Martinez, Member

Pursuant to Section 4(c) of the Rules Governing Procurement for the Albuquerque/Bernalillo County Water Utility Authority, the Central Purchasing Office shall form a selection committee of at least three members with at least one member being an architect or engineer. The Central Purchasing Office in conjunction with the selection committee shall develop an evaluation process, including a multiphase procedure consisting of two or three steps. A two-step procedure may be used when the total amount of money available for the project is less than five hundred thousand dollars (\$500,000) and shall include a Request for Qualifications and an interview. A three-step procedure shall consist of a Request for Qualifications, a Request for Proposals and an interview.

I will manage the Request for Qualifications and serve as a procedural advisor to the Committee. Subject Matter Experts may be added throughout the RFQ process as deemed necessary by the Purchasing Department.

I respectfully request your approval of this Committee in order to start the Request for Qualifications process.

APPROVED:

Mark S. Sanchez

Mark S. Sanchez
Executive Director
Date: 7/9/25 07:56 MDT

RECOMMENDED:

Ege Richardson

Ege Richardson
Chief Engineer
Date: 7/9/25 07:34 MDT

Memo

To: Mark S. Sanchez, Executive Director
Ege Richardson, Chief Engineer

From: Armida Magallanes, Purchasing Administrator *AM*

Through: Candida Kelcourse, Purchasing Officer *OK*

Date: November 3, 2025

Re: Recommendation of Award, CP2026000002, FY26 Reservoir Rehab Project

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors to provide CMAR services for the FY26 Reservoir Rehab Project, pursuant to the CMAR Request for Qualifications (CQ2026000001). The three firms shortlisted for the RFP process were Bradbury Stamm Construction, Inc., RMCI Industrial, LLC., and Smithco Construction, Inc.

The RFP was posted on BidNet and advertised in the local newspaper. Two (2) responsive offers were received and submitted for evaluation. The CMAR Selection Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Listed are all the respondents' average composite scores with all applicable preferences applied as indicated in the scoring details. The largest total composite score possible without preferences applied is Smithco Construction, Inc.

<u>Offeror</u>	<u>Total Composite Scores</u>
Smithco Construction Inc.	98
Bradbury Stamm Construction Inc.	87

The committee recommends the award of contract to Smithco Construction Inc., as they had the highest average composite score after final scoring and is qualified to perform the work. The Purchasing Department concurs with the Committee's recommendation.

Approved:

Mark S. Sanchez

Mark S. Sanchez
Executive Director

11/6/25 12:54 MST
Date

Ege Richardson

Ege Richardson
Chief Engineer

11/6/25 12:31 MST
Date

Enclosures: Total Composite Score

Solicitation: CQ2026000001

ABCWUA FY26 CMAR Reservoir Rehab Program

CMAR Procurement

Name		Total SOQ Score
Respondent #1	Bradbury Stamm	73
Respondent #2	Smithco	90
Respondent #3	RMCI	80

Selection Committee Scores			
Reviewer A	Reviewer B	Reviewer C	Reviewer D
75	72	69	76
89	88	87	94
84	80	78	79

Proposal
Interview
Appendix D Pricing Information
Total Score
Preferences Applied
Total Composite Score

Max. Pts = 100

60
20
20
100

Bradbury Stamm Construction		Smithco
45		52
15		18
14.4		20.0
74.44		90.00
13.00		8.00
87.44		98.00