

**SUPPLEMENTARY CONDITIONS OF THE  
CONSTRUCTION MANAGER AT RISK CONTRACT**

**TABLE OF CONTENTS**

	<b>Page</b>
Article 1— Definitions and Terminology.....	1
Article 2— Preliminary Matters .....	1
Article 3— Contract Documents—Intent, Requirements, Reuse .....	3
Article 4— Commencement and Progress of the Work .....	3
Article 5— Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions.....	5
Article 6— Bonds and Insurance.....	5
Article 7— CMAR’s Responsibilities.....	9
Article 8— Other Work at the Site.....	11
Article 9— Owner’s Responsibilities .....	12
Article 10— Status of Owner’s Advisor and Engineer During Construction .....	12
Article 11— Changes to the Contract .....	12
Article 12— Claims.....	12
Article 13— Allowances; Unit Price Work.....	12
Article 14— Tests and Inspections; Correction, Removal, or Acceptance of Defective Work .....	13
Article 15— Payments to CMAR; Set Offs; Completion; Correction Period .....	13
Article 16— Suspension and Termination .....	15
Article 17— Final Resolution of Disputes.....	16
Article 18— Miscellaneous .....	16
Exhibit A—Foreseeable Bad Weather Days .....	1

# **SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT**

These Supplementary Conditions amend or supplement EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added: for example, "Paragraph SC-4.05" references modifications to General Conditions Paragraph 4.05.

## **ARTICLE 1—DEFINITIONS AND TERMINOLOGY**

No Supplementary Conditions in this Article.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 Delivery of Bonds and Evidence of Insurance**

SC-2.01 Amend Paragraph 2.01.B of the General Conditions to read as follows:

- B. Evidence of CMAR's Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, and before any Work at the site is started, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.

SC-2.01 Delete Paragraph C in its entirety and insert the following in its place:

- C. Evidence of Owner's Insurance—After receipt from CMAR of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to CMAR copies of the policies of insurance to be provided by Owner in this Contract, if any. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

### **2.02 Copies of Documents**

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

“Owner shall furnish CMAR up to ten printed copies of the Contract Documents, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF).”

### **2.03 Electronic Transmittals**

SC-2.03 Supplement Paragraph 2.03 of the General Conditions by adding the following paragraph:

D. Requests by CMAR for Electronic Documents in Other Formats

1. Release of any Electronic Document versions of the Project design documents in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be at the sole discretion of the Owner.
2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project design documents and other Project information requested by CMAR (Request) in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which CMAR agrees:
  - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely and is being provided to CMAR on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, CMAR is advised and acknowledges that the content may not be suitable for CMAR's application or may require substantial modification and independent verification by CMAR. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.
  - b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to CMAR under the request are only for convenience of CMAR. Any conclusion or information obtained or derived from such data will be at the CMAR's sole risk and the CMAR waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
  - c. CMAR shall indemnify and hold harmless Owner, OA, and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from CMAR's use, adaptation, or distribution of any Electronic Documents provided under the Request.
  - d. CMAR agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information, in source or modified file format, to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to CMAR's subcontractors. CMAR warrants that subsequent use by CMAR's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.
3. In the event that Owner elects to provide or directs the Engineer to provide to CMAR any CMAR-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to CMAR, the Owner shall be reimbursed by CMAR on an hourly basis at \$[250 per hour for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

## 2.04 Construction Management

SC-2.04 Supplement Paragraph 2.04 by adding the following to follow Paragraph 2.04.A.6 of the General Conditions to read as follows:

7. CMAR shall start to perform the Work on the date when the Contract Times commence to run unless otherwise stated in the Contract Documents, but no Work shall be done at the site prior to the date on which the Contract Times commence to run without prior consent of the Owner.

8. Provide a list of hourly labor rates, hourly equipment rates and hourly equipment rental rates for all Contractor's forces and also for its Subcontractors, inclusive of Contractor's overhead and profit. In the event specific unit items will not apply, these rates shall be utilized in calculating Change Orders paid as described in Article 11 of the General Conditions.

SC-2.04 Add the following Paragraph as Paragraph 2.04.B of the General Conditions:

B. Within ten (10) days after the Effective Notice of the Agreement and any Work Authorization (unless otherwise specified in the General Requirements), CMAR shall submit to Owner and Engineer for timely review a list of hourly labor rates, hourly equipment rates and hourly equipment rental rates for all CMAR's forces and also for its Subcontractors, inclusive of CMAR's overhead and profit. In the event specific unit items will not apply, these rates shall be utilized in calculating Change Orders paid as described in Article 11 of the General Conditions.

SC-2.05 Add the following Paragraph to follow Paragraph 2.04 of the General Conditions:

### 2.05 Delivery of Certificates:

A. Within thirty days of receipt of Notice of Award, Contractor shall furnish to the Owner proof of qualification with the Employment Security Commission in compliance with W.S. §§ 27-3-502 (f) together with proof of Certification by Wyoming Worker's Safety and Compensation Division.

## **ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE**

### 3.01 Intent

SC-3.01 Delete Paragraph 3.01.C in its entirety.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.03 Reference Points

SC-4.03 Amend Paragraph 4.03.A to read as follows:

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable CMAR to proceed with the Work. CMAR shall, without cost to Owner, provide such material and give such assistance as may be required by Engineer in making such surveys. CMAR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Engineer. CMAR shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of

necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel. Owner shall assist CMAR in relocation of reference points when, in Engineer's opinion, relocation is necessary due to changes in grades or locations.

SC-4.03 Add the following new paragraph immediately after Paragraph 4.03.A:

- B. Lines and Grades: All work done under this Agreement shall be done to the lines and grades shown on the Drawings. CMAR shall keep Engineer informed, a reasonable time in advance of the times and places at which he wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience to Engineer and minimum of delay to CMAR.

4.05 Delays in CMAR's Progress

SC-4.05 Amend Paragraph 4.05.C by replacing Paragraph 2 with the following:

2. Abnormal Weather Conditions

- a. If abnormal weather conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: (1) that weather conditions were abnormal for the period of time in which the delay occurred, (2) that such weather conditions could not have been reasonably anticipated, and (3) that such weather conditions had an adverse effect on the Work as scheduled.
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
  - 1) Every workday on which total precipitation, as rain equivalent, equals or exceeds an amount not reasonably anticipated, as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
  - 2) Every workday on which ambient outdoor air temperature exceeds or is below reasonably anticipated temperature for the season and region of construction.
- c. Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the National Weather Service weather monitoring station at Laramie Regional Airport (KLAR).
- d. CMAR shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit A—Foreseeable Bad Weather Days.
- e. In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit A—Foreseeable Bad Weather Days will be considered as "abnormal weather conditions." The existence of abnormal weather conditions will not relieve CMAR of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on CMAR's then-current Progress Schedule's critical path for the Project.

SC-4.06 Add the following new paragraph immediately after Paragraph 4.05:

4.06 COVID-19 and Infectious Diseases – The Contract Price and Contract Times: (i) are sufficient for Contractor to perform the Work based on currently known or reasonably anticipated disruptions caused by the disease known as COVID-19; and (ii) include Contractor’s compliance with all currently enacted governmental health orders and safety requirements associated with COVID-19. The Contract Price and Contract Times do not contemplate, and specifically exclude, all other cost or schedule impacts caused by COVID-19 or other infectious disease outbreaks, including, but not limited to, future changes to governmental health orders and safety requirements, future labor or material shortages that cannot be reasonably anticipated, or other future disruptions to the Work that cannot be reasonably anticipated. Such cost and schedule impacts will be negotiated by the parties and documented by a written Change Order, provided that to the extent the Contractor claims any delay in the commencement or the progress in the Work as a result of COVID-19 or an infectious disease outbreak, then such claims shall be asserted within the time required by, and shall otherwise comply with the requirements of, Paragraph 4.05.G.

**ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 Availability of Lands

SC-5.01 Delete Paragraph 5.01.B in its entirety.

5.02 Use of Site and Other Areas

SC-5.02 Add the following new Paragraph immediately after Paragraph 5.02.A.2:

3. Further provisions regarding Contractor's Use of Premises may be included in the Final Contract Documents.

5.03 Subsurface and Physical Conditions

SC-5.03 Amend Paragraph 5.03.A to read as follows:

A. Reports and Drawings—The Final Contract Documents identify:

SC-5.03 Amend Paragraph 5.03.C to read as follows:

C. Limited Reliance by CMAR on Technical Data Authorized—CMAR may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents.

5.06 Hazardous Environmental Conditions

SC-5.06 Amend Paragraph 5.06.A to read as follows:

A. Reports and Drawings—The Final Contract Documents identify:

SC-5.06 Amend Paragraph 5.06.B to read as follows:

B. Limited Reliance by CMAR on Technical Data Authorized—CMAR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such "technical data," CMAR

may not rely upon or make any claim against Owner, or Engineer, or any of their Related Entities with respect to:

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 Performance, Payment, and Other Bonds**

SC-6.01 Add the following new subparagraph immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.09.B of the General Conditions is hereby revised to be two years after the date of Final Payment.
2. Before Final Payment, CMAR shall furnish a warranty bond issued in the form of EJCDC® C 612, Warranty Bond (2018). The warranty bond must be in a bond amount of 5 percent of the final Contract Price. The warranty bond period will extend to a date two years after the expected Final Payment date. CMAR shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

SC-6.01 Amend Paragraph 6.01.C to read as follows:

- C. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are approved by the City Attorney, are authorized to do business in Wyoming, and as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent’s authority to act.

SC-6.01 Add the following new subparagraphs immediately after Paragraph 6.01.C:

4. Required Performance Bond Form—The performance bond that CMAR furnishes will be in the form of EJCDC® C-610, Performance Bond (2018).
5. Required Payment Bond Form—The payment bond that CMAR furnishes will be in the form of EJCDC® C-615, Payment Bond (2018).

### **6.02 Insurance – General Provisions**

SC-6.02 Amend Paragraph 6.02.B to read as follows:

- B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, an A.M. Best Financial Size Category of VII or larger, and an A.M. Best Insurance Rating of no less than VIII. Owner reserves the right to reject a certificate of insurance if CMAR’s insurance company is widely regarded in the insurance industry as financially unstable.

SC-6.02 Add the following language at the end of Paragraph 6.02.D:

Triplicate copies of the policies or certificates of insurance acceptable to the Owner, and other entities specified, shall be filed with the Owner within thirty days after the receipt of Notice of Award.

SC-6.02 Delete Paragraph 6.02.E in its entirety.

SC-6.02 Amend Paragraph 6.02.H.1 to read as follows:

1. Subcontractors to purchase and maintain the insurance requirements set forth in this Article 6. It is CMAR's responsibility to ensure that its subcontractors meet these insurance requirements. Owner has the right to review the certificates of any and all subcontractors used by the CMAR.

### 6.03 CMAR's Insurance

SC-6.03 Amend Paragraph 6.03.C to read as follows:

- C. Additional Insureds—All of CMAR's insurance policies required by this Contract, except workers' compensation, must:

SC-6.03 Add the following new paragraphs immediately after Paragraph 6.03.C:

D. Limits of coverage required for Worker's Compensation shall be:

1. State Statutory
2. Employer's Liability: \$1,000,000 Each Occurrence

E. Limits of coverage required for Comprehensive General Liability:

1. Bodily Injury:

\$ 500,000 Each Person  
\$1,000,000 Each Occurrence

2. Personal Injury:

\$ 500,000 Each Person  
\$1,000,000 Each Occurrence

3. Property damage (including coverage for damage caused by blasting if blasting is necessary to perform any operation under the Agreement, collapse or structural injury and/or damage to underground utilities):

\$ 500,000 Each Accident  
\$1,000,000 Aggregate

F. Limits of coverage required for Comprehensive Automobile Liability shall be:

1. Bodily Injury:
  - \$ 500,000 Each Person
  - \$1,000,000 Each Accident
  
2. Automobile Public Liability (Covering all automobiles, trucks, tractors, trailers, motorcycles, or other automotive equipment, whether owned or rented by CMAR, or owned by employees or agents of the CMAR):
  - \$1,000,000 Each Person
  - \$1,000,000 Each Accident
  
3. Automobile Property Damage (Covering all automobiles, trucks, tractors, trailers, motorcycles, or other automotive equipment, whether owned or rented by CMAR, or owned by employees or agents of the CMAR):
  - \$ 500,000 Each Accident
  - \$1,000,000 Aggregate

G. Limits of coverage required for Contractual Liability Insurance shall be:

1. Bodily Injury:
  - \$ 250,000 Each Occurrence
2. Property Damage:
  - \$ 250,000 Each Occurrence
  - \$ 500,000 Accident Aggregate

6.04 Builder's Risk and Other Property Insurance

SC-6.04 Delete Paragraphs 6.04.A, 6.04.B, 6.04.C, 6.04.D, and 6.04.E in their entirety and insert the following in their place:

- A. Owner shall not be responsible for purchasing and maintaining any builder's risk or property insurance to protect the interests of CMAR, Subcontractors, or others in the Work. CMAR may purchase and maintain builder's risk and property insurance to protect his interests. CMAR shall, however, purchase and maintain property insurance on materials stored on and off the site when such materials are to be included in an Application for Payment, to be paid by Owner.
- B. Coverage for Completion Delays—The builder's risk policy may include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical loss or damage to covered property. Such coverage may include, without limitation, fixed expenses, and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and construction management, engineering, or other consultants' fees, if not otherwise covered.

6.06 Receipt and Application of Property Insurance Proceeds

SC-6.06 Delete Paragraph 6.06 in its entirety and insert the following in its place:

6.06 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the policies of insurance required by Article 6 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. Owner shall distribute any money so received as agreed between the parties' interest. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. Owner shall have the power to adjust and settle any loss with the insurers, whether the parties in interest have reached an agreement concerning their respective losses or not. If the parties in interest have reached an agreement, Owner shall make settlement with the insurers in accordance with the agreement.

SC-6.07 Add the following new paragraph immediately after Paragraph 6.06:

6.07 Waiver of Rights

A. Owner and CMAR intend that all policies purchased in accordance with Article 6 will protect Owner, CMAR, Subcontractors, Engineer, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds. The policies will provide primary coverage for all losses and damages by the perils covered thereby.

SC-6.08 Add the following new paragraph immediately after Paragraph 6.07:

6.08 Acceptance of Bonds and Insurance; Option to Replace

A. If Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CMAR in accordance with Article 6 on the basis of its not complying with the Contract Documents, Owner's Advisor shall notify CMAR in writing thereof within ten days of the date of delivery of such certificates to Owner.

## **ARTICLE 7—CMAR'S RESPONSIBILITIES**

7.02 Supervision and Superintendence

SC-7.02 Add the following new Paragraphs immediately after Paragraph 7.02.B:

C. CMAR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

D. A licensed supervisor shall be on site at all times of construction work. If a licensed supervisor is not on site, the Engineer reserves the right to stop work until such time that a supervisor is present.

7.06 Labor; Working Hours

SC-7.06 Amend Paragraph 7.06.D to read as follows:

D. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours with noise levels in compliance with §8.40.060 of the Laramie Municipal Code, and CMAR will not perform or permit overtime work or

the performance of Work on Saturday, Sunday or any legal holiday without Engineer's prior written consent.

SC-7.06 Add the following new paragraph immediately after Paragraph 7.06.D:

E. CMAR agrees that if Owner considers any laborer, foreman or supervisor in the employ of CMAR to be incompetent or to fail to do satisfactory work or fail to follow acceptable safety practices, that person shall be immediately discharged upon order of the Engineer.

7.07 Services, Materials, and Equipment

SC-7.07 Add the following language at the end of Paragraph 7.07.A:

CMAR shall also provide any special weather protection deemed necessary by Engineer, without any additional cost to Owner.

7.10 Concerning Subcontractors and Suppliers

SC-7.10 Amend Paragraph 7.10.L to read as follows:

L. All Work performed for CMAR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CMAR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

SC-7.10 Add the following new paragraph immediately after Paragraph 7.10.O.2:

3. CMAR agrees that if Owner considers any Subcontractor, Supplier or other person in the employ of Contractor to be incompetent or to fail to do satisfactory work or fail to follow acceptable safety practices, the Subcontractor, Supplier or other person shall be immediately discharged upon order of the Engineer.

SC-7.10 Add the following new paragraph immediately after Paragraph 7.10.O:

P. Engineer may furnish to any such Subcontractor, Supplier or other person or organization, to the extent possible, information about amounts paid to CMAR in accordance with CMAR's applications for payment.

7.12 Permits

SC-7.12 Add the following new paragraphs immediately after Paragraph 7.12.A:

B. CMAR shall obtain written authorization from Owner to move or operate a vehicle or vehicles with a load of size or weight exceeding the limits as defined by Chapter 12.18 of the Laramie Municipal Code, City of Laramie, Wyoming.

C. Further provisions regarding CMAR obtaining Permits may be included in the Final Contract Documents.

7.13 Taxes

- SC-7.13 Add the following new paragraph immediately after Paragraph 7.13.A:
- B. Owner is exempt from payment of sales and compensating use taxes of the State of Wyoming and of cities and counties thereof on all materials to be incorporated into the Work.
    - 1. Owner will furnish the required certificates of tax exemption to CMAR for use in the purchase of supplies and materials to be incorporated into the Work.
    - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by CMAR, or to supplies or materials not incorporated into the Work.

7.15 Record Documents

SC-7.15 Add the following new Paragraph immediately after Paragraph 7.15.A:

- B. Further provisions in respect of such record Drawings may be included in the Final Contract Documents.

7.16 Safety and Protection

SC-7.16 Add the following new Paragraphs immediately after Paragraph 7.16.J:

- K. CMAR shall not move any vehicles or equipment over public streets, roads or highways within the City of Laramie in violation of §10.20.120 of the Laramie Municipal Code. Subcontractors will be considered as under the control of the CMAR for the purpose of enforcement of this provision. The cost of repair of any damage to roads, bridges or other appurtenances or structures by the use or moving of CMAR's vehicles and equipment will be deducted from the CMAR's final estimate and payment.
- L. CMAR shall maintain drainage facilities such as gutters, inlets and culverts free of obstruction as required by Chapter 12 of the Laramie Municipal Code and if the facilities are damaged by CMAR's operation he shall repair or replace them to the satisfaction of the Engineer and Owner.
- M. Further provisions in respect to Underground Facilities may be included in the Final Contract Documents.

7.22 Delegation of Professional Design Services

SC-7.22 Delete Paragraph 7.22.F in its entirety.

## **ARTICLE 8—OTHER WORK AT THE SITE**

8.02 Coordination

SC-8.02 Amend Paragraph 8.02.A to read as follows:

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Final Contract Documents or provided to CMAR prior to the start of any such other work:

SC-8.02 Amend Paragraph 8.02.B to read as follows:

- B. Unless otherwise provided in the Final Contract Documents, Owner shall have sole authority and responsibility for such coordination.

#### **ARTICLE 9—OWNER’S RESPONSIBILITIES**

9.01 Communications to CMAR

SC-9.01 Delete Paragraph 9.01.A in its entirety.

9.06 Insurance

SC-9.06 Delete Paragraph 9.06.A in its entirety.

#### **ARTICLE 10—STATUS OF OWNER’S ADVISOR AND ENGINEER DURING CONSTRUCTION**

10.03 Determinations for Unit Price Work

SC-10.03 Amend Paragraph 10.03.A to read as follows:

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by CMAR. Engineer will review with CMAR the Engineer's preliminary determinations on such matters before rendering a written decision thereon by recommendation of an Application for Payment or otherwise.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

SC-10.04 Amend Paragraph 10.04.B to read as follows:

- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner’s Advisor nor Engineer will show partiality to Owner or CMAR.

#### **ARTICLE 11—CHANGES TO THE CONTRACT**

No Supplementary Conditions in this Article.

#### **ARTICLE 12—CLAIMS**

No Supplementary Conditions in this Article.

#### **ARTICLE 13—ALLOWANCES; UNIT PRICE WORK**

13.02 Unit Price Work

SC-13.02 Delete Paragraph 13.02.E.1 in its entirety and insert the following in its place:

1. The unit price with respect to an Item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
  - a. If the total cost of a particular Item of Unit Price Work amounts to five percent or more of the Contract Price and the variation in the quantity of the particular Item

of Unit Price Work performed by CMAR differs by more than twenty-five percent from the estimated quantity of such item indicated in the Agreement, any allowance for a change in unit price shall apply only to that portion which exceeds one hundred twenty-five percent, or is less than seventy-five percent, of the estimated quantity; and

- b. if there is no corresponding adjustment with respect to any other Item of Work; and
- c. if CMAR believes that CMAR has incurred additional expense as a result thereof, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or CMAR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-13.02 Delete Paragraph 13.02.E.3 in its entirety.

#### **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

##### 14.02 Tests, Inspections and Approvals

SC-14.02 Amend Paragraph 14.02.A to read as follows:

- A. CMAR shall provide Owner’s Advisor twenty-four hours prior notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspections and testing personnel to facilitate required inspections or tests.

SC-14.02 Amend Paragraph 14.02.B to read as follows:

- B. CMAR shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by CMAR, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

##### 14.07 Owner May Correct Defective Work

SC-14.07 Add the following new Paragraph immediately after Paragraph 14.07.D:

- E. Further requirements regarding Tests and Inspections may be included in the Final Contract Documents.

#### **ARTICLE 15—PAYMENTS TO CMAR; SET OFFS; COMPLETION; CORRECTION PERIOD**

##### 15.02 Progress Payments

SC-15.02 Add the following language at the end of Paragraph 15.02.B.2:

No advance payment for materials or services may be requested.

SC-15.02 Add the following language at the end of Paragraph 15.02.B.3:

No payments under Wyo. Stat. §16-6-116(a) shall be made until the CMAR files a sworn statement, stating that all claims for material and labor performed under the Contract have been and are paid for the entire period of time for which the payment is to be made. The sworn statement shall be filed with the public entity which the contract has been made, as designated

in Wyo. Stat. §16-6-117. If any claim for material and labor is disputed, the sworn statement shall so state and the amount claimed to be due the subcontractor or materialmen may be filed by the claimant as a claim against the CMAR's surety bond. Payment to the CMAR under Wyo. Stat. §16-6-116(a) shall be paid without regard to any pending claims against the CMAR's surety bond unless the public entity has actual knowledge that the surety bond is deficient to settle known claims, in which case an amount equal to disputed claims may be withheld.

SC-15.02 Amend Paragraph 15.02.B.4 to read as follows:

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement, pursuant to Wyo. Stat. §16-6-702.

SC-15.02 Delete Paragraph 15.02.C.3 in its entirety.

SC-15.02 Amend Paragraph 15.02.D.1 to read as follows:

1. Forty-five days after presentation of the Application for Payment to Owner with Owner's Advisor's recommendation for approval, the amount recommended will (subject to the provisions of Paragraph 15.02.E) become due, and when due will be paid by Owner to CMAR.

SC-15.02 Add the following new paragraphs immediately after Paragraph 15.02.D.1:

2. Owner shall retain five percent of the amount of each payment until Final Payment, which shall follow final completion and acceptance of all Work, and advertisement of same pursuant to these Contract Documents.
3. CMAR agrees that he will pay for work, services and labor of all Sub-Contractors and Suppliers, and for all equipment employed on the Work, and for all labor and materials incidental to the completion of the Work.
4. Pursuant to Wyo. Stat. §16-6-602, Owner shall pay interest beginning the sixty-first day after presentation of the Application for Payment to Owner at the rate of one and one-half percent (1 ½%) per month on the unpaid balance of the progress payment until the account is paid in full, unless a good faith dispute exists as to Owner's obligation to pay all or a portion of the account.

SC-15.02 Delete Paragraph 15.02.E.3 in its entirety.

SC-15.02 Add the following new paragraph immediately after Paragraph 15.02.F:

- G. If it becomes necessary for Owner to take over the completion of the Work, all amounts owed the CMAR, including any payment retained under Wyo. Stat. §16-6-702(b), shall first be applied toward the cost of completion of the Work, as provided in Wyo. Stat. §16-6-703, as amended. Any balance of the retained payment remaining after completion of the Work by Owner shall be payable to CMAR or CMAR's creditors. The retained payment which may be due to CMAR shall be due and payable as prescribed by Wyo. Stat. §16-6-116(a).

#### 15.04 Substantial Completion

SC-15.04 Add the following language at the end of Paragraph 15.04.B:

If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Owner's Advisor and Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by

CMAR to Owner. If CMAR does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

SC-15.04 Amend Paragraph 15.04.C by deleting the last sentence.

#### 15.07 Final Payment

SC-15.07 Add the following language at the end of Paragraph 15.07.A.1:

Final payment is generally used for requesting release of any applicable retainage.

SC-15.07 Amend Paragraph 15.07.E to read as follows:

- E. Final Payment Becomes Due—After presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended for approval by Owner’s Advisor, less any sum Owner is entitled to set off against Owner’s Advisor’s recommendation, including but not limited to liquidated damages, and following publication and posting of Owner’s Notice of Final Payment and acceptance of the Work for a period of forty days in a manner as required by the laws of the State of Wyoming, said amount will become due and will be paid by Owner to CMAR. Final payment will be made pursuant to Wyo. Stat. §16-6-116 and 16-6-117, as amended.

SC-15.07 Add the following new paragraph immediately after Paragraph 15.07.E:

- F. No final payment will be made until the CMAR provides a warranty security meeting the requirements of Article 6.

#### 15.09 Correction Period

SC-15.09 Amend Paragraph 15.09.B to read as follows:

- B. If within two years after the date of Final Payment (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any Specific Provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CMAR’s use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 5.02.A is found to be defective, CMAR shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

SC-15.09 Amend Paragraph 15.09.D to read as follows:

- D. If within ten days of mailing instructions to CMAR, CMAR does not comply with the terms of Owner’s written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work re-moved and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CMAR.

## ARTICLE 16—SUSPENSION AND TERMINATION

### 16.01 Owner May Suspend CMAR Services of Work

SC-16.01 Amend Paragraph 16.01.A to read as follows:

At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days, or longer if both CMAR and Owner agree in writing, by notice in writing to CMAR which will fix the date on which Work will be resumed. CMAR shall resume the Work on the date so fixed. CMAR shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, which is shown to Owner's satisfaction to be directly attributable to any such suspension caused by Owner if CMAR makes a Claim therefore as provided in Article 12.

16.02 Owner May Terminate for Cause

SC-16.02 Delete Paragraph 16.02.D in its entirety.

#### **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

SC-17.01 Delete Paragraph 17.01 in its entirety and insert the following in its place:

17.01 Attorneys' Fees: For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

#### **ARTICLE 18—MISCELLANEOUS**

18.07 Controlling Law

SC-18.07 Delete Paragraph 18.07.A and insert the following in its place:

- A. The CMAR shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract or any properly promulgated rules and regulations related thereto, and Section 504 of the Rehabilitation Act of 1973.
- B. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Second Judicial District, Albany County, Wyoming.

SC-18.11 Add the following new paragraphs immediately after Paragraph 18.10:

18.11 Pollution Control

- A. In conformance with the Wyoming Environmental Quality Act, 1973, the CMAR shall schedule and conduct his operation to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems and impoundments (lakes, reservoirs, etc.). Construction of drainage facilities and performance of other contract work which will contribute to the control of erosion and sedimentation shall be carried out in conjunction with earthwork operations or as soon thereafter as practicable. The area of bare soil exposed at any one time by construction operations shall be kept to a minimum.

- B. Prior to suspension of construction operations for appreciable lengths of time, CMAR shall shape the earthwork in a manner that will permit storm runoff with a minimum of erosion. Temporary erosion and sediment control measures, such as berms, dikes, slope drains, or sedimentation basins deemed necessary by the Engineer shall be provided and maintained until permanent drainage facilities and erosion control features are complete and operative. Unless otherwise provided for in the Contract Documents, temporary erosion control measures will not be paid for directly, but will be considered as a subsidiary obligation of the CMAR covered under the various items of Work.
- C. The CMAR shall also conform to the following practices and controls:
1. When borrow material is obtained from other than commercially operated sources, erosion of the borrow site shall be so controlled both during and after completion of the work that erosion will be minimized and sediment will not enter streams or other bodies of water. Waste or disposal areas and construction roads shall be located and constructed in a manner that will keep sediment from entering streams;
  2. Frequent fording of live streams will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary. Unless otherwise approved in writing by the Engineer, mechanized equipment shall not be operated in live streams;
  3. When Work areas or gravel pits are located in or adjacent to live streams, such areas shall be separated from the main stream by a dike or other barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize the muddying of a stream;
  4. All waterways shall be cleared as soon as practicable of false-work, piling, debris or other obstructions placed during construction operations and not as part of the finished work;
  5. Water from aggregate washing or other operations containing sediment shall be treated by filtration, a settling basin or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged;
  6. Pollutants such as fuels, lubricants, bitumens, raw sewage and other harmful materials shall not be discharged into or near rivers, streams, and impoundments or into natural or man-made channels leading thereto. Wash water or waste from concrete mixing operations shall not be allowed to enter live streams; and
  7. All applicable regulations of fish and wildlife agencies and statutes relating to land and water quality and the prevention and abatement of pollution shall be complied with in the performance of the Work.

SC-18.12 Add the following new paragraphs immediately after Paragraph 18.11:

18.12 Pollution Control – Wyoming Air Quality Act

- A. In accordance with the Wyoming Environmental Quality Act, 1973, the CMAR shall provide and use such smoke and dust control measures as are in accordance with the rules, regulations and standards promulgated by the Wyoming Department of Environmental Quality, Air Quality Division, to prevent undue air pollution and hazardous traffic conditions.
- B. Conformance with the provisions of the Agreement bearing on air pollution control measures will be included as specific line items in the Guaranteed Maximum Price provided by the CMAR.

SC-18.13 Add the following new paragraph immediately after Paragraph 18.12:

18.13 Labor

- A. The CMAR's employment practices for this Agreement shall conform to the labor laws of the State of Wyoming and the various other acts amendatory and supplementary thereto and to all other laws, ordinances and legal requirements thereto.

SC-18.14 Add the following new paragraph immediately after Paragraph 18.13:

18.14 Contract Void if Not Funded

- A. By Wyoming law, any contract awarded by the Owner is void if the city council fails to appropriate funds for the project. If that happens, the CMAR will have no claim against the Owner for time, materials, or otherwise.
- B. Each payment obligation of Owner is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the CMAR, the contract may be terminated by Owner at the end of the period for which the funds are available. Owner shall notify the CMAR at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to Owner in the event this provision is exercised, and Owner shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be constructed to permit Owner to terminate this Contract to acquire similar services from another party.

SC-18.15 Add the following new paragraph immediately after Paragraph 18.14:

18.15 Samples, Tests Cited, Specifications and Abbreviations

- A. Whenever the following abbreviations are used in the Contract Documents or on the Drawings, they shall be construed the same as the respective expressions represented and unless otherwise modified, the tests will be in accordance with the most recent cited standard methods which are current on the date of Request for Qualifications.

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State and Highway Transportation Officials
AGC	Associated General Contractors of Wyoming
AIA	American Institute of Architects
ANSI	American National Standards Institute
ARA	American Railway Association
ASCE	American Society of Civil Engineers
ASTM	American Society of Testing and Materials
AWPA	American Wood Preservers Association
AWWA	American Water Works Association
AWS	American Welding Society
EJCDC	Engineers Joint Contract Documents Committee
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration
OSHA	Occupational Safety and Health Administration
TAPPI	Technical Association of the Pulp and Paper Industry
WCLIB	West Coast Lumber Inspection Bureau

SC-18.16 Add the following new paragraph immediately after Paragraph 18.15:

18.16 Ownership of Documents/Work Product

- A. All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are at all times the joint property of the CMAR and Owner. Upon termination of the Contract all of the above documents return to the Owner.

SC-18.17 Add the following new paragraph immediately after Paragraph 18.16:

18.17 Independent Contractor

- A. The CMAR shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the Owner for any purpose. The CMAR shall assume sole responsibility for any debts or liabilities that may be incurred by the CMAR in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the CMAR or its agents and/or employees to act as an agent or representative for or on behalf of Owner, or to incur any obligation of any kind on the behalf of Owner. The CMAR agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Owner's employees will inure to the benefit of the CMAR or the CMAR's agents and/or employees as a result of this Contract.

SC-18.18 Add the following new paragraph immediately after Paragraph 18.17:

18.18 Publicity

- A. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the CMAR, shall identify Owner as the sponsor and shall not be released without prior written approval from Owner.

SC-18.19 Add the following new paragraph immediately after Paragraph 18.18:

18.19 Wyoming Product Preference

- A. Unless otherwise provided in the Contract, the CMAR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of work, whether temporary or permanent. The CMAR shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors. The CMAR agrees to provide Wyoming made goods where those goods are comparable in price and quality to those required by this Contract.
- B. CMAR shall comply with Wyo. Stat. §§ 16-6-201, 16-6-202, 16-6-203, 16-6-204, 16-6-205 and 16-6-206, as applicable.

SC-18.20 Add the following new paragraph immediately after Paragraph 18.19:

18.20 Nondiscrimination

- A. The CMAR shall comply with Presidential Executive Order 11246 entitled, “Equal Employment Opportunity”, as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq., the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Wyoming Human Rights Act, and the Age Discrimination Act of 1975.
- B. All parties of this Contract agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, sexual orientation, gender identity, age, marital status, physical or mental disability, or national origin by the person or persons performing the Contract including, but not limited to, the prevailing wage laws.

SC-18.21 Add the following new paragraph immediately after Paragraph 18.20:

18.21 Confidentiality of Information

- A. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the CMAR in the performance of this Contract shall be kept confidential by the CMAR unless written permission is granted by Owner for its release.

SC-18.22 Add the following new paragraph immediately after Paragraph 18.21:

18.22 Sovereign Immunity

- A. The Owner does not waive sovereign immunity by entering into this Contract, and specifically retains immunity and all defenses available to them as sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

SC-18.23 Add the following new paragraph immediately after Paragraph 18.22:

18.23 Third Party Beneficiary Rights

- A. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party’s performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

SC-18.24 Add the following new paragraph immediately after Paragraph 18.23:

18.24 Immigration Reform and Control Act of 1986

- A. In connection with the performance of the CMAR pursuant to this Contract, the CMAR warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 (P.L. 99-603, November 6, 1986) which prohibits the hiring, referral or recruitment of aliens not authorized to work, and provides for employer verification that an individual is not an unauthorized alien. The CMAR agrees to send notice to all subcontractors regarding the requirements of the Immigration Reform and Control Act of 1986 and notice that they are expected to comply with all of its provisions.



**EXHIBIT A—FORESEEABLE BAD WEATHER DAYS**

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature at 11:00 a.m.	Number of Foreseeable Bad Weather Days in Month Based on High Temperature at 3:00 p.m.
January	1	4	0
February	2	4	0
March	4	2	0
April	4	0	0
May	2	0	0
June	1	0	0
July	1	0	3
August	1	0	4
September	0	0	2
October	0	0	0
November	0	1	0
December	0	3	0

Notes:

- Two inches of sleet equals one inch of rain. Five inches of wet, heavy snow equals one inch of rain. Fifteen inches of “dry” powder snow equals one inch of rain.