



## **EXHIBIT A**

**DRAFT FORM of AGREEMENT between OWNER and CONSTRUCTION  
MANAGER AT RISK CONTRACTOR (AIA A133-2009 as modified by Owner)**

## **REQUEST FOR QUALIFICATIONS**

**PART A: PRE-CONSTRUCTION SERVICES (Design-Assist) and  
PART B: CONSTRUCTION SERVICES**

**Louisiana State University Library**  
**Louisiana State University**  
Baton Rouge, Louisiana  
Project No. 19-601-20-03, F.19002406

May 16, 2024

# AIA<sup>®</sup> Document A133<sup>™</sup> - 2009

*Standard Form of Agreement Between Owner and CMAR contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

**PART A: PRE-CONSTRUCTION SERVICES (or Part B: Construction Services)**

\*AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year **2024**

BETWEEN the Owner:

**State of Louisiana  
Office of the Governor  
Division of Administration  
Claiborne Office Building, 1201 North Third Street, Suite 7-160  
Baton Rouge, LA 70802**

and the CMAR contractor:

**To be Determined  
P O or Street Address  
City State Zip**

for the following Project:

**Louisiana State University Library  
Louisiana State University  
Baton Rouge, Louisiana  
Project No. 19-601-20-03, F.19002406**

The Designer:

**Coleman Partners Architects LLC / Eskew Dumez Ripple, APC, (AJV)  
3377 North Boulevard  
Baton Rouge, LA 70806**

The Owner's Designated Representative:

**Office of Facility Planning and Control  
DOA / State of Louisiana**

CMAR Contractor's Designated Representative:

**To Be Determined**

The Designer's Designated Representative:

**Dale Songy**

The Owner and CMAR contractor agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager at Risk Contractor (CMAR contractor) where the CMAR contractor is also the Constructor, as modified by the Owner; AIA A201-2017 General Conditions of the contract for construction, as modified by the Owner; the Owner's construction documents, which include the drawings, addenda issued during the proposal period and acknowledged by the Proposers, project manuals, including the specifications, all exhibits, instructions, provisions, amendments and post-bid addenda attached thereto or referenced herein; the Owner's Request for Qualifications (RFQ) for Part A: Pre-Construction Services and Part B: Construction Services; the CMAR contractor's Proposal (Statement of Qualifications) issued in response to the Owner's RFQ; the CMAR contractor's Cost Proposal (pertains to Part B: Construction Services Agreement only); the CMAR contractor's construction phase critical path method schedule, and the CMAR contractor's Guaranteed Maximum Price (GMP) Proposal (pertains to Part B: Construction Services Agreement only) described herein, hereinafter collectively referred to as the "Contract Documents" are hereby incorporated by reference and are made part of this Agreement Between the Owner and the CMAR contractor, hereinafter referred to as the "Parties" and individually as a "Party".

### **§ 1.2 Relationship of the Parties**

The CMAR contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Designer and exercise the CMAR contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the CMAR contractor and to make payments to the CMAR contractor in accordance with the requirements of the contract documents.

### **§ 1.3 General Conditions**

For pre-construction services, or in the event that the pre-construction and construction proceed concurrently, A201-2017, as modified by the Owner, shall apply to the pre-construction services as provided in this Agreement. For construction services, the General Conditions of the contract shall be the AIA® Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner, which is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the CMAR contractor.

## **ARTICLE 2 CMAR CONTRACTOR'S RESPONSIBILITIES**

The CMAR contractor's pre-construction services responsibilities are set forth in Sections 2.1 and 2.2. The CMAR contractor's construction services responsibilities are set forth in Section 2.3. The Owner and CMAR contractor may agree, in consultation with the Designer, for construction to commence prior to completion of the pre-construction services, in which case, both phases may proceed concurrently. The CMAR contractor shall identify a representative authorized to act on behalf of the CMAR contractor with respect to the Project.

CMAR contractor and its subcontractors shall perform all Part A: Pre-Construction Services and Part B: Construction Services as described in the Owner's Request for Qualifications (RFQ), Owner / CMAR contractor Agreement AIA A133-2009, as modified by Owner, and General Conditions AIA A201-2017, as modified by Owner for Part A: Pre-Construction Services and Part B: Construction Services for this project, hereinafter referred to as the "Agreement (contract)". The Owner's RFQ and all addenda are hereby incorporated by reference as if fully set forth herein. CMAR contractor shall provide all necessary personnel, supplies, and equipment required to perform the pre-construction and construction services as generally described herein.

The Parties understand and agree that the project consists of, but is not necessarily limited to, the following:

**Part B: Construction Services - CMAR Contractor Responsibility Items**

A summary of program elements is included in Exhibit C – (Program being posted separately)

**Part B: Construction Services – CMAR Contractor Coordination / Integration Only Items**

The following are anticipated / required CMAR contractor coordination / integration scope items included in Part B: Construction Services

Independent Testing (any testing not made a requirement of the CMAR contract where required by the construction documents)  
FF&E (non-fixed furnishings / equipment)  
Surveys (Geotechnical / Topographic)  
Photo-Documentation  
Independent Commissioning Services

The Owner may consider the delivery of the Project in subparts / phases with certain portions amended into the Part A: pre-construction services contract as advanced construction start activities and the remainder included in the Part B: construction services contract. The CMAR contractor shall be required to provide a 100% Performance and Payment Bond for the full value of construction activities contracted under the Part B: construction services contract and/or amended into the Part A: pre-construction services contract. The associated construction documents may be issued in smaller construction packages. This shall not control or dictate the CMAR contractor's combination of the Work into subcontractor bid packages or the award of subcontract agreements. A Notice to Proceed and Notice of Acceptance (Substantial Completion) will be issued separately for any advanced start activities Part A: pre-construction services and the Part B: construction services contracts.

CMAR contractor understands that time is of the essence and agrees to take all reasonable steps to avoid delays in the construction and delivery of the Project.

**§ 2.1 PRE-CONSTRUCTION SERVICES**

**§ 2.1.1 Preliminary Evaluation**

Upon commencement of the contract, the CMAR contractor shall review in-progress design documents and assist the Designer with the development of the design through completion of 100% Construction Documents and complete a comprehensive review of plans and specifications for each phase of design with the specific intent to (1) identify and eliminate conflicts, discrepancies, errors, and omissions within the documents prior to completion of the documents and/or release of the documents for subcontractor pricing, (2) implement and conduct a constructability program to identify and document project costs and schedule savings opportunities, (3) develop a validation estimate of project costs, and (4) develop a baseline schedule for construction of the Project. The CMAR contractor shall submit its written reports from the above referenced plan reviews to the Owner and Designer at the various phases of design where referenced in 2.1.7 and participate in meetings with the Owner and Designer to review the above referenced reports in detail.

**§ 2.1.2 Coordination**

The CMAR contractor shall complete a preliminary assessment of the program requirements, project budget and site conditions, including but not limited to, existing structures and surface topography, surface and subsurface utilities, access and staging opportunities and limitations in order to offer recommendations regarding the approach to construction. Upon completion of this assessment, the CMAR contractor shall submit recommendations and information to the Owner and Designer regarding site usage and site improvements; building systems, equipment and construction feasibility; and selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for

safety measures and programs; temporary Project facilities; equipment, materials and services for common use of the CMAR contractor and Owner's representatives and/or separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed drawings and specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the work progress schedule and the AFC. Notwithstanding the above, the CMAR contractor shall not be required to provide A/E services unless specifically required by the construction documents. CMAR contractor's recommendations and information provided shall be furnished solely in its capacity as a Contractor.

### **§ 2.1.3 Constructability Program**

The CMAR contractor shall provide a "Constructability Report" at the various phases of design where referenced in 2.1.7. The constructability program shall follow accepted industry practices and be reviewed by the Owner and Designer at the various design milestones. The CMAR contractor shall prepare a "Constructability Report" that identifies items that may, in the CMAR contractor's opinion, negatively impact construction of the Project. The "Constructability Report" shall address the overall coordination of project drawings, specifications and details and identify discrepancies that may potentially generate changes in the work or claims once Project construction commences. CMAR contractor shall update the report at least once monthly during the pre-construction phase. CMAR contractor shall also implement a system for tracking questions, resolutions, decisions, directions and other informational matters that arise during the development of the drawings and specifications for the Project. The decision tracking system shall be in a format approved by the Owner and Designer and shall be updated by the CMAR contractor at least once monthly during the pre-construction phase.

### **§ 2.1.4 Consultation**

The CMAR contractor shall jointly schedule and attend regular meetings with the Owner and Designer to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The CMAR contractor shall advise the Owner and the Designer on proposed site use and improvements, selection of materials, and building systems and equipment. The CMAR contractor shall also provide recommendations consistent with the Project requirements to the Owner and Designer on constructability; availability of materials and labor; time requirements for procurement; installation, and construction; and factors related to construction costs including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

The CMAR contractor shall make recommendations to the Owner and Designer regarding organization of the construction documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interest of the Project and Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple, separate contracts. These recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provision for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, Owner's goal for local subcontractor participation, and other related goals.

The CMAR contractor shall review the construction documents with the Owner and Designer to eliminate areas of conflict and overlap in the work to be performed by the various subcontractors and/or Owner's separate contractors. The CMAR contractor shall review the construction documents to ensure that they contain adequate provision for jobsite areas required for construction, all temporary facilities necessary for the performance of the Work, and provisions for all of the jobsite facilities necessary to manage, inspect, and supervise construction of the Project.

### **§ 2.1.5 Project Schedule**

Within thirty (30) days of the Owner's Notice To Proceed with Part A: pre-construction services, the CMAR contractor shall evaluate the proposed Project schedule and sequence of Work, and prepare, and periodically

update the Project schedule in accordance with the requirements of Section 3.10 of AIA A201-2017, as modified by Owner, for the Owner and Designer's review and approval. The CMAR contractor shall coordinate and integrate the Project schedule with the services and activities of the Owner, Designer and CMAR contractor. As design proceeds, the Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of substantial completion. If Project schedule updates indicate that previously approved schedules may not be met, the CMAR contractor shall make appropriate recommendations to the Owner and Designer.

#### **§ 2.1.6 Phased Construction Where Applicable**

The CMAR contractor shall make recommendations to the Owner and Designer regarding the merits associated with the phased issuance of drawings and specifications to facilitate construction of the Work, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

#### **§ 2.1.7 Preliminary Cost Estimates**

Within thirty (30) days of receipt of the Owner's Notice to Proceed with Part A: pre-construction services, the CMAR contractor shall prepare for the review and approval of the Owner and Designer a control estimate of Project costs, utilizing quantity survey, unit cost, volume, or other appropriate cost estimating techniques. The CMAR contractor's control estimate(s) shall be based on the most current plans and specifications for each phase of the Project. Allowances and estimates may be included within the control estimate for elements of the Work for which the design is yet to be completed. The cost estimate reports shall be completed at the one-hundred percent (100%) completion of Schematic Design phase, one-hundred percent (100%) completion of Design Development phase, and ninety percent (90%) completion of the Construction Documents phase of design. The GMP Proposal shall be due no later than ninety percent (90%) completion of the Construction Documents phase of design.

#### **§ 2.1.8 Preliminary Estimate Reconciliation**

Following reconciliation of the control estimate with the Owner and Designer, if the reconciled control estimate prepared by the CMAR contractor exceeds the Owner's Available Funds for Construction (AFC), the CMAR contractor shall prepare and submit written recommendations to the Owner and Designer regarding appropriate actions to be taken to reduce the Project costs to an amount within the Owner's AFC.

The CMAR contractor is solely responsible for the construction budget and for preparing and updating all procurement and control estimates and distributing them to the Owner and Designer throughout the duration of the Project. The CMAR contractor shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope and/or quality of the project while providing ongoing updates of their cost and budget impact. The CMAR contractor shall advise the Owner and Designer immediately if the CMAR contractor has reason to believe that the most current control estimate will exceed the GMP or not meet the Owner's requirements and will as a result recommend reasonable strategies for bringing the Project in line with the control estimate and the GMP.

#### **§ 2.1.9 Subcontractors and Suppliers**

The CMAR contractor shall seek to develop subcontractor interest in the Project and, in accordance with Section 5.2.2. of AIA Document A201-2017, as modified by the Owner, shall furnish to the Owner and Designer for their review and approval, a list of potential subcontractors, accompanied by a summary of the qualifications, relevant experience, and financial status of each potential subcontractor, including suppliers who are proposed by the CMAR contractor to furnish materials or equipment fabricated to a special design, from whom bids and/or proposals may be requested for each principal portion of the Work. The Designer will promptly reply in writing to the CMAR contractor if the Designer or Owner knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or



Designer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Designer to later object to or reject any proposed subcontractor or supplier. The pre-qualification of subcontractors and/or suppliers may continue into the construction phase of the Project.

The CMAR contractor shall develop a bid / proposal package strategy in coordination with the Designer that addresses the entire scope of each phase and stage of the Project. Self-performance by the CMAR contractor may be allowed, not to exceed 20% of the GMP, providing the CMAR contractor can demonstrate that self-performance represents the best value to the Project based on current subcontractor market conditions. The scope of any and all self-performance is subject to Owner approval. The bid / proposal package strategy shall be reviewed with the Owner and Designer on a regular basis and revised throughout the buyout of the Project in order to best promote the interests of the Project and Owner. The CMAR contractor shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages and make recommendations that minimize the adverse effects of labor shortages.

The CMAR contractor shall refine, implement and monitor required subcontractor procurement to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

The CMAR contractor shall consult with and make recommendations to the Owner and Designer on the acquisition schedule for fixtures, furniture and equipment, and coordinate with Owner as may be required to meet the overall construction program.

#### **§ 2.1.10 Obtaining Bids / Proposals**

The CMAR contractor shall solicit competitive lump sum proposals from trade contractors or subcontractors for the performance of all elements of the Project, establish criteria for determining the bid or proposal that provides the best value to the Owner, and consult with Owner and Designer on strategy for procurement. A minimum of three (3) bids / proposals shall be solicited. The CMAR contractor shall notify the Owner and Designer in writing in advance of the date in which bids / proposals are due for the various bid packages as well as facilitate transparency through Owner oversight of the bid / proposal process and CMAR contractor receipt of subcontract bids.

The CMAR contractor shall schedule and conduct pre-bid / pre-proposal conferences with interested proposers, subcontractors, material suppliers, equipment suppliers, and record minutes of the conferences. The CMAR contractor shall provide sufficient notice to Owner and Designer of all such conferences.

The CMAR contractor shall review the proposals in a manner that does not disclose the contents of any proposal to persons outside the Owner and Designer during this selection process. Based on the selection criteria included in the proposals process, the CMAR contractor shall recommend to the Owner the bid / proposal that provides the best value to the Owner for the Project. Upon Owner's written concurrence in the recommendation, the CMAR contractor may negotiate the terms of the subcontract with the apparent best value bidder / proposer.

#### **§ 2.1.11 Long-Lead-Time Items**

The CMAR contractor shall be solely responsible for and identify and recommend to the Owner a schedule for procurement of materials and/or equipment requiring extended delivery times and advise Owner on expedited procurement of those items to meet the project schedule and minimize risk of cost escalation. The CMAR contractor shall advise Owner and Designer on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner and subject to the Owner's prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions mutually acceptable to the CMAR contractor and Owner. Upon the Owner's acceptance of the CMAR contractor's GMP proposal, the Owner shall assign all contracts for such items to the CMAR contractor, who shall accept responsibility for such items as if procured by the CMAR contractor. The CMAR contractor shall expedite the delivery of long-lead-time items and assume all risk associated with on-site storage and cost escalation.

With the specific written approval of the Owner and/or Designer, the CMAR contractor shall, when reasonably required to maintain the Project schedule, be permitted to contract with subcontractors and to enter into contracts to secure long-lead time items prior to the Owner's acceptance of the CMAR contractor's GMP proposal for the Project.

### **§ 2.1.12 Extent of Responsibility**

The CMAR contractor does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendations and advice of the CMAR contractor concerning design alternatives shall be subject to the review and approval of the Owner and Designer. It is not the CMAR contractor's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CMAR contractor recognizes that portions of the drawings and specifications are at variance therewith, the CMAR contractor shall immediately notify the Owner in writing.

### **§ 2.2 Guaranteed Maximum Price (GMP) Proposal and Contract Time**

**§ 2.2.1** The CMAR contractor shall submit / propose a GMP consisting of the sum of the subcontractor bids/proposals mutually selected by the CMAR contractor and Designer for all portions of the Work submitted for subcontractor pricing, and/or the CMAR contractor's estimates of the costs for all portions of the Work not yet submitted for subcontractor pricing for the cost of the Work; all General Conditions costs; the CMAR contractor fee, the CMAR contractor staffing and site office costs, and the Owner and CMAR contractor Contingencies accompanied by the proposed contract time.

**§ 2.2.2** Not Used.

### **§ 2.2.3 Basis of Guaranteed Maximum Price (GMP)**

The CMAR contractor shall include with the GMP proposal, a written statement of its basis, which shall include:

- .1** A list of the drawings and specifications, including all addenda thereto and the conditions of the contract, which were used in preparation of the GMP proposal.
- .2** A list of allowances and estimates and a statement of their basis. Any allowances included within the accepted GMP shall be subject to prior approval by the Owner.
- .3** A list of the clarifications and assumptions made by the CMAR contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications.
- .4** The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, Owner and CMAR contractor Contingencies, and the fee that comprise the GMP.
- .5** The CMAR contractor's baseline Project schedule indicating the dates of commencement and acceptance (substantial completion) for the whole and/or various parts / phases of the Project upon which the proposed GMP is based.
- .6** A list of subcontractor trade categories the CMAR contractor plans to self-perform, if applicable.

**§ 2.2.4** In preparing the GMP price proposal, the CMAR contractor shall include its Contingency for the CMAR contractor's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in an Amendment to Contract.

§ 2.2.5 The CMAR contractor shall meet with the Owner and Designer to review the GMP proposal. In the event that the Owner and Designer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMAR contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

§ 2.2.6 Not Used

§ 2.2.7 Prior to the Owner's acceptance of the CMAR contractor's GMP proposal and issuance of a Notice to Proceed for Part B: construction services, the CMAR contractor shall not incur any cost to be reimbursed as part of the cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the Part B: construction services contract. The GMP shall be subject to additions and deductions by a change in the Work or amendment to contract and the date of acceptance (substantial completion) subject to adjustment as provided in the contract documents.

§ 2.2.9 The Owner shall authorize and cause the Designer to revise the drawings and specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal. Such revised drawings and specifications shall be furnished to the CMAR contractor in accordance with the schedules agreed to by the Owner, Designer, and CMAR contractor. The CMAR contractor shall promptly notify the Designer and Owner if such revised drawings and specifications are materially inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The GMP shall include in the cost of the Work only those taxes which are enacted at the time the GMP is established. Should the CMAR contractor and Owner be unsuccessful at arriving at an agreed to GMP, in accordance with State of Louisiana revised statute RS 38:2225.2.4 subparagraph G.(6):

***“If Owner and the CMAR contractor are not able to agree upon constructability, construction phasing and sequencing, the GMP for the project, the maximum number of contract days to complete the project, and to reach a negotiated agreement, then the project shall be readvertised and publicly bid utilizing the design-bid-build delivery method, provided the CMAR contractor shall be prohibited from bidding on the project.”***

Accordingly, the Owner shall be required to terminate this agreement. Prior to termination, CMAR contractor shall provide Owner with all documents, reports, memos, estimates, spreadsheets, schedules, electronic documents, drawings, details, submittals and meeting minutes (hereinafter referred to within this paragraph as “records”) created or obtained by CMAR contractor relating to its scope of services for this Project, which records shall be the property of the Owner along with all copyrights therein.

## § 2.3 CONSTRUCTION SERVICES

### § 2.3.1 General

§ 2.3.1.1 Construction Services shall commence on the earlier of:

- (1) the Owner's written acceptance of the CMAR contractor's GMP proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the CMAR contractor to:
  - a) Award a subcontract, or
  - b) Issue a purchase order for materials or equipment required for the Work.

### § 2.3.2 Administration

§ 2.3.2.1 Self-performance by the CMAR contractor may be allowed, not to exceed 20% of the GMP, providing the CMAR contractor can demonstrate that self-performance represents the best value to the Project based on current subcontractor market conditions. The scope of any and all self-performance is

subject to Owner approval.

The CMAR contractor shall organize and maintain a competent, full-time staff at the project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct the progress of the work and further the project goals of the Owner and Designer.

§ 2.3.2.1.1. The CMAR contractor shall obtain a minimum of three (3) bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list of potential bidders previously accepted by the Owner and Designer in accordance with Section 2.1.6. After analyzing such bids, CMAR contractor shall deliver such bids to the Owner and Designer. By mutual agreement between the Owner and CMAR contractor, and with the input of the Designer, bids will be reviewed and accepted. The CMAR contractor shall not be required to contract with anyone to whom the CMAR contractor has reasonable objection. Positive variances between the cost of the Work included within the CMAR contractor's GMP proposal accepted by the Owner and the actual cost of the Work established through subcontractor pricing shall remain within the CMAR contractor controlled portion of the GMP until such time as 90% of the Project cost of the Work has been established through subcontractor agreements, upon which time the positive variances shall be transferred to the Owner's contingency.

§ 2.3.2.1.2 Following acceptance by the Owner, the contract and/or GMP may be modified either by an authorization request or amendment to contract only for the following reasons:

- a) If the scope of Work is changed by the Owner.
- b) If unforeseen or hidden conditions are encountered for which the CMAR contractor has no responsibility.
- c) If there are latent errors or omissions found within the contract documents for which the CMAR contractor could not have reasonably anticipated nor bears responsibility.
- d) The approval of claims by the Owner for additional compensation or additional time in accordance with Article 15 of AIA Document A201-2017, as modified by Owner.

§ 2.3.2.2 Not Used.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 Not Used

§ 2.3.2.5 The CMAR contractor shall schedule and conduct meetings at which the Owner, Designer, CMAR contractor, and if appropriate, subcontractors, can discuss the status of the Work. A meeting shall be held where the phases of the Project can be discussed on no less than a weekly basis in the CMAR contractor's on-site Project office. As mutually agreed by the parties, the CMAR contractor shall prepare meeting minutes in a Prolog Project Management Systems format agreeable to the Owner and Designer and distribute minutes from the previous meeting no less than three (3) consecutive workdays in advance of the next scheduled meeting date. ”

§ 2.3.2.6 Within 14 days after the Owner's acceptance of the GMP proposal, the CMAR contractor shall prepare, and submit for review and approval by the Owner and Designer, a detailed Project schedule in accordance with Section 3.10 of AIA Document A201-2017, as modified by Owner, including the Owner's occupancy requirements.

§ 2.3.2.7 The CMAR contractor shall provide one copy of each report of daily construction activities to the Owner and Designer on a daily basis. The CMAR contractor shall submit said reports by the next work day following the performance of the Work. Reports of Work performed on Friday, Saturday or Sunday

shall be provided the following Monday. The CMAR contractor's daily report shall contain a record of weather, subcontractors working on the site, number of workers, work accomplished, problems encountered and other similar relevant data as the Owner and/or Designer may reasonably require. The log shall be available to the Owner and Designer.

**§ 2.3.2.8** The CMAR contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMAR contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Designer at regular intervals. The CMAR contractor shall adhere to the requirements regarding the administration of the contract as contained in the Project manuals.

**§ 2.3.2.9** The Owner shall contract separately and provide all required services of testing laboratories for these services required by the contract. The CMAR contractor shall include within its GMP, the cost for, and provide, all required services of testing laboratories to perform the third-party testing services required by the contract documents where such tests or services must be repeated due to a failure of the Work to meet the requirements of the contract documents. In cases where tests indicate the Work does not conform to the requirements of the contract documents, the CMAR contractor shall bear the cost of retesting such non-conforming Work, as well as the cost of all corrective measures, unless the failure is due to circumstances beyond the control of the CMAR contractor. In such cases, and unless the failure is due to circumstances beyond the control of the CMAR contractor, as determined by the Designer, neither the costs of such retesting nor the costs of corrective measures shall be included as a reimbursable cost, as defined in Article 6 of this Agreement, within the GMP. In addition, the GMP shall not be increased due to the cost of such tests, or the cost of any corrective measures that may be necessary due to the failure of the Work to conform to the contract requirements, unless the failure is due to circumstances beyond the control of the CMAR contractor, as determined by the Designer.

**§ 2.3.2.9.1** If the CMAR contractor determines the services of a geotechnical engineer are required in addition to the geotechnical report included within the Project manuals, the CMAR contractor shall advise the Designer in writing that such services are required and shall include a justification for those services. If the Designer agrees such additional services are necessary and are not included in the scope of the Work on which the GMP is based, the Owner shall provide such services at no additional cost to the CMAR contractor.

## **§ 2.4 Professional Services**

Section 3.12.10 of AIA A201–2017, as modified by Owner, shall apply to both pre-construction and construction services.

## **§ 2.5 Hazardous Materials**

Section 10.3 of AIA A201–2017, as modified by Owner, shall apply to both pre-construction and construction services.

# **ARTICLE 3 OWNER'S RESPONSIBILITIES**

## **§ 3.1 Information and Services**

**§ 3.1.1** Upon written request by the CMAR contractor, the Owner shall provide information in a timely manner regarding the requirements of the Project.

**§ 3.1.2** Not Used

**§ 3.1.3** The Owner shall establish and update an overall budget for the Project which shall include contingencies for Owner changes in the Work and other costs which are the responsibility of the Owner.

### **§ 3.1.4 Structural and Environments Tests, Surveys and Reports**

During pre-construction services, the Designer, on behalf of the Owner, shall furnish services specified in Article 3, Sections 3.1.4.1- 3.1.4.5 with reasonable promptness and at the Owner's expense. Except to the extent that the CMAR contractor knows of any inaccuracy, the CMAR contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in sections 3.1.4.1 through 3.1.4.5 but shall exercise customary precautions relating to the performance of the Work.

**§ 3.1.4.1** Reports, surveys, drawings and tests concerning the conditions of the site where required by law.

**§ 3.1.4.2** Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

**§ 3.1.4.3** Subject to the Designer's prior written approval, the services of a geotechnical engineer when such services are requested by the CMAR contractor to perform percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipated subsoil conditions, with reports and appropriate professional recommendations.

**§ 3.1.4.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

**§ 3.1.4.5** The services of other consultants when, in the opinion of the Designer, such services are reasonably required by the scope of the Project.

### **§ 3.2 Owner's Designated Representative**

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the CMAR contractor. The Owner's designated representative is the Office of Facility Planning and Control. All authority by the Owner's representative must be in writing and signed by the Representative. No oral approval, directive, or authorization is binding on the Owner.

#### **§ 3.2.1 Legal Requirements**

The Owner shall advise the Designer and CMAR contractor of any special legal requirements relating specifically to the Project that differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

#### **§ 3.3 Architect / Engineer (Designer)**

The Owner shall retain a licensed architect or engineer (Designer) to provide basic services as described in its Contract Between Owner and Designer, current as of the date of this agreement and as modified by the Owner. The Owner shall authorize and cause the Designer to provide only those pre-construction and construction phase additional services approved by the Owner in writing in advance. Such services shall be provided in accordance with time schedules agreed to by the Owner and Designer. Upon request of the CMAR contractor, the Owner shall furnish to the CMAR contractor a copy of the Owner's Agreement with the Designer, from which compensation provisions may be deleted.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRE-CONSTRUCTION SERVICES

The Owner shall compensate and make payments to the CMAR contractor for Part A: pre-construction services as follows:

### § 4.1 Compensation

§ 4.1.1 For the services described in Section 2.1, Section 2.2, and the Owner's Request for Qualifications, the CMAR contractor shall be compensated the fixed, lump sum pre-construction services fee of **one hundred fifty thousand Dollars (\$150,000.00)**. The GMP for all phases of the project shall be delivered on or prior to day 660 of the overall Part A: pre-construction services contract (i.e. 100% Construction Documents). Should actual labor and/or expenses exceed the man-hours and stipulated fixed contract amount, there shall be no fee adjustment for Part A: pre-construction services.

§ 4.1.2 Not Used

§ 4.1.3 Not Used

### § 4.2 Payments

§ 4.2.1 Payments shall be due upon invoicing following completion of deliverables / services rendered for the various phases of basic design as follows:

100% SCHEMATIC DESIGN	25%
100% DESIGN DEVELOPMENT	25%
50% CONSTRUCTION DOCUMENTS	20%
90% CONSTRUCTION DOCUMENTS	20%
<u>100% CONSTRUCTION DOCUMENTS</u>	<u>10%</u>
TOTAL = 100%	

§ 4.2.2 Progress payments for pre-construction services earned are due and payable thirty (30) days from the date the Owner receives the CMAR contractor invoice bearing the Designer's approval for payment.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION SERVICES

Should the CMAR contractor be awarded Part B: construction services, the Owner shall compensate the CMAR contractor for construction services as follows:

### § 5.1 Compensation

§ 5.1.1 For Part B: construction services and the CMAR contractor's performance of the Work as described in Section 2.3, the Owner shall pay the CMAR contractor in current funds the contract sum consisting of the cost of the Work, as defined in Article 6, the CMAR contractor fee, the CMAR contractor construction phase site office and staffing costs, and the Owner and CMAR contractor Contingencies where earned, as defined herein and as described in the Owner's RFQ and below. The fixed amounts enumerated herein are based on the current Available Funds for Construction (AFC) in the amount of **\$119,409,000.00** exclusive of 4% Owner Contingency, 1% CMAR contractor Contingency and a construction duration of **730 days** consistent with the Project schedule. Should there be a mutually agreed to adjustment (increase or reduction) in work scope and/or construction duration, the CMAR contractor fee and construction phase site office and staffing costs shall be adjusted proportionately.

### 5.2 Guaranteed Maximum Price (GMP)

Should CMAR contractor be awarded Part B: construction services for performance of the Work described in Article 2.3 and the Owner's RFQ, CMAR contractor shall be compensated the not-to-exceed sum of     TBD     Dollars (\$     TBD    .00) for the cost of the Work including General Conditions,     TBD     Dollars (\$     TBD    .00) for the CMAR contractor fee,     TBD     Dollars (\$     TBD    .00) for the CMAR contractor site office and staffing costs, as described in the Owner's

RFQ and below, and       TBD       **Dollars** (\$       TBD      .00) or five percent (5%) Construction Contingency, as described herein.

### **Contingencies**

As indicated above, the Part B Construction Services contract shall include a total Construction Contingency of five percent (5%) based on the Cost of the Work including General Conditions, CMAR contractor fee and CMAR contractor Site Office and Staffing Costs or the sum of       TBD       **Dollars** (\$       TBD      .00). Said Construction Contingency shall consist of (1) the Owner Contingency and (2) the CMAR contractor Contingency.

### Owner Contingency

The Owner Contingency shall be the sole property of the Owner established by multiplying the Cost of the Work, as first established within this Agreement, including General Conditions, CMAR contractor fee and CMAR contractor Site Office and Staffing costs by four percent (4.0%) or the sum of       TBD       **Dollars** (\$       TBD      .00). The Owner is under no obligation to increase the value of the Owner's Contingency beyond the dollar value first established due to adjustments to the Contract Sum by Authorization Request or Amendment. With the prior written consent of the Owner, said Owner's Contingency may be used to compensate the CMAR contractor for additional costs which are the results of:

- (1) Subcontractor default due to no fault of the CMAR contractor;
- (2) Unusually adverse market conditions relating to labor costs or the cost of materials arising after establishment of the GMP for which the CMAR contractor is not responsible and could not have reasonably predicted;
- (3) Increases in the Cost of the Work due to the Designer's reasonable interpretation of the Contract Documents per Article 1.2.3 of the AIA Document A201-2017, as modified by the Owner;
- (4) Portions of the Work having been inadvertently omitted from the Cost of the Work by the CMAR contractor. However, in no event shall the Owner's Contingency be awarded to a subcontractor who, following the establishment of the GMP, notifies the CMAR contractor that costs for portions of its scope were omitted from the subcontractor's firm fixed bid/proposal due to causes beyond the control of the CMAR contractor or the Owner,
- (5) Other conditions affecting the Cost of the Work for which the CMAR contractor bears no responsibility, and
- (6) Other conditions which, in the sole discretion of the Owner, warrant the award of additional compensation to the CMAR contractor from the Owner's Contingency.

As indicated above, the Owner Contingency shall be the property of the Owner and may be approved for use by the CMAR contractor only upon the prior written consent of the Owner, which consent shall not be unreasonably withheld for uses number one (1) through five (5) above. Award of the Owner's Contingency for use number six (6) above shall be at the Owner's sole discretion and may be withheld for any reason. Any unused Owner's Contingency remaining at the completion of the Project shall be returned to the Owner and the GMP decreased accordingly by Amendment to contract.

It is agreed and understood by the Parties that the Owner will manage the award of additional compensation to the CMAR contractor from the Owner Contingency, including additional compensation awarded under use number six (6) as defined above, in a manner to achieve a potential zero dollar (\$0.00) balance in the Owner Contingency at the completion of the Project. In the event the Owner's use of its Contingency in accordance with use number six (6) above causes the remaining balance of Owner Contingency to be decreased to an amount insufficient to compensate the CMAR contractor for legitimate and approvable requests for compensation in accordance with uses number one (1) through five (5), as defined above, and as reasonably determined by the Owner, the Owner agrees, upon the written request of the CMAR



contractor, to restore the balance of the Construction Contingency by an amount not to exceed the value of all compensation previously approved by the Owner under use number six (6) above. The Owner's reinstatement of the Owner's Contingency under this paragraph shall not cause the total value of the Owner's Contingency to exceed the amount first established and stipulated below.

CMAR contractor Contingency

The CMAR contractor Contingency shall be established by multiplying the Cost of the Work, including General Conditions, CMAR contractor Fee and CMAR contractor Site Office and Staffing costs by one percent (1.0%) or the sum of     TBD     Dollars (\$     TBD    .00). This Contingency is also the property of the Owner; however, said Contingency may be used by the CMAR contractor for Work which is reasonably required to complete the Project but which was not indicated in the Contract Documents and could not have been reasonably anticipated by the CMAR contractor prior to establishment of the Cost of the Work. The CMAR contractor's use of this Contingency shall not exceed **fifty thousand dollars (\$50,000.00)** per occurrence without the prior written consent of the Owner, which consent will not unreasonably be withheld. The CMAR contractor agrees to exercise its fiduciary responsibility to the Owner in its use of this Contingency. The CMAR contractor further agrees to maintain and submit an accounting of its use (in a form agreeable to the Owner) with its monthly Application for Payment and report its use of this Contingency to the Owner at the weekly Project Meetings. Any unused CMAR contractor's Contingency remaining at the completion of the Project shall be returned to the Owner and the GMP decreased accordingly by Amendment to contract.

**Guaranteed Maximum Price (GMP)**

The Guaranteed Maximum Price for this Project is the amount of (\$     TBD     Dollars (\$     TBD    .00) and is the sum of the following components and values:

**Part B: Advanced Construction Start**

- \$                     .00 – Selective Demolition (where applicable)
- \$                     .00 – Mold Remediation (where applicable)
- \$                     .00 – Long-Lead Item Procurement (where applicable)
- \$                     .00 – Site Clearing and Utilities Infrastructure (where applicable)
- \$                     .00 – **TOTAL**

**Part B: Construction Services (this Agreement)**

- \$                     .00 – Cost of the Work, including General Conditions Costs
- \$                     .00 – CMAR contractor Fee
- \$                     .00 – CMAR contractor Site Office and Staffing Costs
- \$                     .00 – Owner Contingency (4%)
- \$                     .00 – CMAR contractor Contingency (1%)
  
- \$                     .00 – **TOTAL CONTRACT AMOUNT**
  
- \$                     .00 – Allowance for Optional / Alternate Scope Items where applicable  
(Items that may be amended into Part B: Construction Services)
  
- \$     **TBD**    .00 – **GUARANTEED MAXIMUM PRICE (GMP)**

§ 5.2.1 The sum of the cost of the Work, the CMAR contractor site office and staffing costs, and the CMAR contractor fee are guaranteed by the CMAR contractor not to exceed the amount provided above and in the GMP proposal, subject to additions and deductions by changes in the Work as provided in the contract documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the contract documents as the GMP. Costs that would cause the GMP to be exceeded due to no fault of the Owner shall be paid by the CMAR contractor without reimbursement by the Owner.

§ 5.2.2 Following approval of the CMAR contractor's schedule of values for the Project, underruns of costs on line items within the GMP, with the exception of the Owner contingency and the CMAR contractor Contingency lines, may be used to offset overruns of the same, with the net amount of the total underruns being returned to the Owner by the CMAR contractor at the completion of the Project. However, following the approval of the CMAR contractor's schedule of values, the contract values of specific line items may be adjusted within the GMP only by prior written approval of the Owner. For this Article 5, an "underrun" is defined as a cost which is less than the dollar amount of that cost as provided for herein, and an "overrun" is defined as a cost in excess of the dollar amount of that cost as provided for herein. No provision for shared savings between the Owner and CMAR contractor is included in this Agreement or elsewhere.

### § 5.3 Changes in the Work

§ 5.3.1 Adjustments to the GMP on account of changes in the Work subsequent to the execution of the Part B: construction services Agreement may be determined by any of the methods listed in Section 7.3.3 of A201-2017.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™-2017 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.7 of A201™-2017 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™-2017 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the CMAR contractor's fee as defined in Section 5.1.1 of this Agreement.

### § 5.3.4

If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work. However, the Construction Manager shall be due no increase in its stipulated Fee until such time as the Cost of the Work, as indicated above, is increased by five percent (5.0%) as the result of scope adjustments to the Contract amount, or the added value of the Cost of the Work exceeds       TBD       Dollars (\$       TBD      .00).

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION SERVICES

### § 6.1 Costs to be Reimbursed

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the CMAR contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.2.1-6.7.1.

§ 6.1.2 Not Used

### § 6.2 Labor Costs

- .1 Base pay wages of construction workers directly employed by the CMAR contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Base pay wages or salaries of the CMAR contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

- .3 Base pay wages and salaries of the CMAR contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the CMAR contractor for taxes, insurance, contributions, assessments and benefits required by law, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.1 through 6.2.4 included in 6.2 as reformatted

§ 6.2.5 Not Used

### § 6.3 Subcontract Costs

Payments made by the CMAR contractor to subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- .1 Costs, including transportation, of materials and equipment incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the CMAR contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the cost of the Work.

§ 6.4.1 through 6.4.2 included in 6.4 as reformatted

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- .1 Costs, including transportation, installation, maintenance, dismantling and the removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMAR contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CMAR contractor. Cost for items previously used by the CMAR contractor shall mean fair market value. Owner shall participate in the decision to purchase or rent the machinery, equipment, or hand tools. If Owner decides that such items are to be purchased rather than rented, these items will be the property of Owner and will be returned to and retained by the Owner after completion of the work. Costs shall be consistent with current prevailing market rates and shall not exceed the current costs that a willing and prudent purchaser would be expected to pay for such goods, services, materials, equipment, labor, tools, supplies, machinery, or temporary facilities in East Baton Rouge Parish, Louisiana.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CMAR contractor at the site, whether rented from the CMAR contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental rates of Contractor's own equipment shall not exceed the current Associated Equipment Distributors (AED) Manual charges, as adjusted for the location of the Project, or the lowest rental rate reasonably available for the equipment from commercial rental companies within the area of the project, without Owner's prior written approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the equipment when first put into service in connection with the Work. Operating costs (per AED), if any, are to be billed at actual cost.

- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of CMAR contractor personnel incurred while traveling in discharge of duties related to the Work. All such travel and subsistence expenses of CMAR contractor's personnel shall be in accordance with the Division of Administration's Policy and Procedure Memorandum No. 49.

§ 6.5.1 through 6.5.5 included in 6.5 as reformatted

§ 6.5.6 Not Used

### § 6.6 Miscellaneous Costs

- .1 That portion directly attributable to this contract of premiums for insurance and bonds. Cost of the required insurance coverages, performance and payment bonds, builder's risk insurance and other insurance policies required by this Agreement, are all included in the General Condition costs as referenced in paragraphs 5.1.1 and 5.2 above. All insurance and bond costs are to be at actual and auditable cost inclusive of all premium adjustments.
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the CMAR contractor is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the CMAR contractor is required by the contract documents to pay.
- .4 Fees of testing laboratories for tests required by the contract documents and Article 2.3.2.8. of this Agreement, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the contract documents
- .6 Data processing costs related to the Work. (Note: Only for costs expended on the site as part of the general condition costs. Home office data processing costs of any nature are not reimbursable under this Agreement.)
- .7 Deposits lost for causes other than the CMAR contractor's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Each party shall be responsible for its own legal fees, costs and expenses relating to this Agreement.
- .9 Expenses for relocation and temporary living allowances for the CMAR contractor's personnel shall only be reimbursed by the Owner if the Owner approves such costs in writing beforehand.

§ 6.6.1 through 6.6.9 included in 6.6 as reformatted

### § 6.7 Other Costs

- .1 That other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

### § 6.7.1 Emergencies and Repairs to Damaged or Nonconforming Work

The cost of the Work shall also include costs described in Section 6.1.1. which are incurred by the CMAR contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4. of AIA A201-2017.

§ 6.7.2 through 6.7.3 Not Used

§ 6.7.4 The costs described in Sections 6.2.1 through 6.7.1 shall be included in the cost of the Work notwithstanding any provision of A201™–2017 or other conditions of the contract which may require the CMAR contractor to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

### § 6.8 Costs not to be Reimbursed

§ 6.8.1 The cost of the Work shall not include:

- .1 Salaries and other compensation of the CMAR contractor's personnel stationed at the CMAR contractor's principle office or offices other than the site office, except as specifically provided in Section 6.2.1.
- .2 Expenses of the CMAR contractor's principle office and offices other than the site office, except as specifically provided in Section 6.2.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.2.1.
- .4 The CMAR contractor's capital expenses, including interest on the CMAR contractor's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.5.
- .6 Costs due to the negligence of the CMAR contractor or to the failure of the CMAR contractor to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of pre-construction phase services
- .8 Any cost not specifically and expressly described in Sections 6.2 through 6.7.
- .9 Costs that would cause the GMP to be exceeded.
- .10 Bonuses and other discretionary expenses unless specifically approved in writing by the Owner.
- .11 Costs to correct CMAR contractor's or any subcontractor's defective work.
- .12 Any acceleration costs incurred by CMAR contractor to overcome unexcused delays to the

work.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the CMAR contractor shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CMAR contractor shall make provisions so that they can be secured.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the cost of the Work.

### § 6.10 Not Used

### § 6.11 Accounting Records

§ 6.11.1 The CMAR contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The Owner and its accountants shall be afforded access to the CMAR contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the CMAR contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

a) The CMAR contractor shall keep full and detailed accounts in accordance with Generally Accepted Accounting Principles (GAAP) and exercise such cost controls as may be necessary for proper financial management under this Agreement. Owner's accountants, Owner's agent, its authorized representative, and auditors for the State of Louisiana shall be afforded reasonable access, at reasonable times, to the CMAR contractor's detailed cost reports, time sheets, payroll burden calculations, insurance rates (workers compensation and general liability) and the support therefore, insurance contracts, invoices, bills, reimbursable expenses reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, as-built record drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other records, drawings or data relating to the Work performed in accordance with this

Agreement, and the CMAR contractor shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

b) CMAR contractor's records which shall include accounting records (hard copy, as well as computer readable data if reasonably available), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets correspondence; change proposal files (including documentation); and any other supporting evidence necessary to substantiate charges related to this Agreement (all foregoing hereinafter referred to as "records") shall be opened to inspection and subject to audit by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (1) CMAR contractor's compliance with this Agreement, and (2) compliance with provisions for authorization requests, payments or claims submitted by the CMAR contractor or any of its subcontractors or other payees.

c) Such audits may require inspection from time-to-time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit shall also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with this Agreement.

d) Owner's agent or its authorized representative shall have reasonable access at reasonable times to the CMAR contractor's facilities, shall be allowed to interview current or former employees that have direct involvement with the performance of this Agreement, shall have access to all necessary records, shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and will be provided support from the CMAR contractor's staff as required. CMAR contractor shall provide such access and/or all necessary records or support upon 14 calendar day notice by Owner to CMAR contractor.

e) The CMAR contractor shall provide the Owner and Designer with an executed copy of all subcontracts, (with subcontractors, materialmen, suppliers or other vendors of services, supplies or materials) including authorization requests or other contracts and/or any document required under this Agreement entered into in furtherance of the Work, if specifically requested by the Owner or Designer.

## **ARTICLE 7 CONSTRUCTION SERVICES PAYMENTS**

### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon applications for payment submitted to the Designer by the CMAR contractor and certificates for payment certified by the Designer, the Owner shall make progress payments on account of the contract sum to the CMAR contractor as provided below and elsewhere in the contract documents.

**§ 7.1.2** The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

Applications for payment shall only be made for Work completed during the period covered by the application. Applications for payment shall not be for Work projected to be completed after the application for payment is submitted. The CMAR contractor shall make its best effort, and shall require the same of its sub-contractors, to include within each application for payment all costs incurred by the CMAR contractor and sub-contractors within the period covered by the application for payment. Costs in excess of ninety (90) days old included within applications for payment may be subject to disapproval by the Owner.

**7.1.3** When an application for payment is received by the Designer, payment shall be made by the Owner not later than forty-five (45) days after Designer's documented submittal of the application for payment to the Owner, unless the application for payment is rejected due to errors or ineligible billing.

§ 7.1.4 With each application for payment, the CMAR contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Designer to demonstrate that cash disbursements already made by the CMAR contractor on account of the cost of the Work equal or exceed (1) progress payments already received by the CMAR contractor; less (2) that portion of those payments attributable to the CMAR contractor's fee; plus (3) payrolls for the period covered by the present application for payment.

§ 7.1.5 Each application for payment shall be based upon the schedule of values approved by the Owner and Designer in accordance with the contract documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the CMAR contractor's fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Designer may require. This schedule, unless objected to by the Owner or Designer, shall be used as a basis for reviewing the CMAR contractor's applications for payment.

§ 7.1.6 Applications for payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the CMAR contractor on account of that portion of the Work for which the CMAR contractor has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the contract documents, the amount of each progress payment shall be computed as follows (and within FPC Certificate/Application for Payment form):

- .1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of A201™–2017, even though the GMP has not yet been adjusted by amendment.
- .2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the CMAR contractor's fee, less retainage of five (5.0%). The CMAR contractor's fee shall be an amount that bears the same ratio to that fixed-sum fee as the cost of the Work in the two preceding sections bears to a reasonable estimate of the probable cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the CMAR contractor in the documentation required by Section 7.1.4 to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Owner or Designer has withheld or nullified a certificate for payment as provided in Section 9.5 of A201™–2017.
- .7 Due to construction phasing and Owner occupancy requirements, where applicable, certificates of substantial completion for each Phase, or the combination of Phases may be issued by mutual agreement upon the CMAR contractor's completion and the Owner's occupancy of each portion or phase of the Project. Therefore, with the exception of amounts to be withheld to in accordance with, retainage shall be released by completed and Owner occupied portion of the Project part. In no event shall the retainage for an individual Phase be reduced to below five percent (5%) of the approved schedule of values cost of the Work for that phase, including an appropriately allocated portion of the CMAR contractor's Fee, prior to substantial completion of that Project phase.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5.0%). The procedure for the Designer's review and approval of the CMAR contractor's payments is defined in Article 9 of AIA Document A201-2017.

§ 7.1.9 Except with the Owner's prior approval, the Owner will not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the CMAR contractor's applications for payment, the Designer shall be entitled to rely on the accuracy and completeness of the information furnished by the CMAR contractor and shall not be deemed to represent that the Designer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Designer has made exhaustive or continuous on-site inspections or that the Designer has made examinations to ascertain how or for what purposes the CMAR contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment shall be made by the Owner to the CMAR contractor when (1) the Contract has been fully performed by the CMAR contractor except for the Constructor's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™-2017, as modified by Owner, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final application for payment and a final accounting for the cost of the Work have been submitted by the CMAR contractor and reviewed by the Owner's accountants; and (3) the expiration of the 45 day lien notice period, delivery of a clear lien certificate and consent of surety, and the approval of the CMAR contractor's final certificate for payment by the Designer.

§ 7.2.1.1 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the cost of the Work substantiated by the CMAR contractor's final accounting and the CMAR contractor's fee, but not more than the GMP.
- .2 Subtract amounts, if any, for which the Designer withholds, in whole or in part, a final certificate for payment as provided in Section 9.5.1 of A201-2017 or other provisions of the contract documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the CMAR contractor, the CMAR contractor shall reimburse the difference to the Owner.

§ 7.2.2 The Owner's accountants will review and report in writing on the CMAR contractor's final accounting within 30 days after delivery of the final accounting to the Owner by the CMAR contractor. Based upon such cost of the Work as the Owner's accountants report to be substantiated by the CMAR contractor's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Designer will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final certificate for payment with a copy to the CMAR contractor or notify the CMAR contractor and Owner in writing of Designer's reasons for withholding a certificate as provided in Section 9.5.1 of A201-2017, as modified by Owner. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201-2017.

§ 7.2.3 If the Owner's accountants report the cost of the Work, as substantiated by the CMAR contractor's final accounting, to be less than claimed by the CMAR contractor, the CMAR contractor shall be entitled to proceed in accordance with Article 9.



## § 7.2.4 Not Used

### ARTICLE 8 INSURANCE AND BONDS

#### § 8.1 Insurance Required of the CMAR contractor

§ 8.1.1 Using its own funds, the CMAR contractor shall provide and maintain from inception of the contract to the date of final payment insurance and bond coverage in the amounts required by Article 11 of AIA Document A201-2017, as modified by Owner. CMAR contractor shall be responsible for payment of any and all deductibles.

#### § 8.2 Performance Bond and Payment Bond

§ 8.2.1 The Owner shall require the CMAR contractor to furnish performance and payment bonds covering the faithful performance of the Work (construction activities) required by the contract documents and payment of obligations arising thereunder. The amount of the performance and payment bond shall be equal to one-hundred percent (100%) of the value of the Part B: construction services Agreement (contract inclusive of cost of the Work including General Conditions, CMAR contractor fee, CMAR contractor site office and staffing costs, and 4% Owner and 1% CMAR contractor Contingencies). The CMAR contractor is not required to bond the value of its pre-construction services fee but would be required to provide a performance and payment bond equal to one-hundred percent (100%) of the value of any advanced construction start activities amended into the Part A: pre-construction services agreement.

§ 8.2.2 The CMAR contractor shall deliver the required performance and payment bond(s) to the Owner prior to the execution of the Part B: construction services agreement and/or amendment(s) to the Part A: pre-construction services agreement should advanced construction start activities be applicable.

### ARTICLE 9 MISCELLANEOUS PROVISIONS

#### § 9.1 Dispute Resolution

§ 9.1.1 The Parties shall use their best good faith efforts to resolve all disputes between them. No dispute shall be submitted to arbitration or mediation unless expressly agreed to in writing by the Owner and CMAR contractor.

#### § 9.2 Other Provisions

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by Owner.

#### § 9.2.2 Extent of Contract

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the Owner and the CMAR contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and CMAR contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

#### § 9.2.3 Ownership and Use of Documents

All designs, drawings, specifications, details, documents, models, data, electronic documents and information, and all other work products of the CMAR contractor and Designer relating to the Project are instruments of service for the Project, whether or not the Project is completed, and are the property of the Owner along with all copyrights therein. The CMAR contractor shall obtain grants from its subcontractors consistent with this Agreement. The Owner is entitled to the possession of all such instruments of service specifically developed for the Project upon completion of the Project, termination of this Agreement, or upon the Owner's request, whichever occurs first, and upon payment of all amounts due to CMAR contractor under this Agreement. The Owner may reuse any of the instruments of service created by the CMAR contractor and its subcontractors for the Project or any addition or modification to any portion of the Project, or for any other project, including new projects, as the Owner desires without the permission

of or compensation to the CMAR contractor or Project Designer. The CMAR contractor shall not be liable for any injury or damages resulting from the reuse of the instruments of service by the Owner if the CMAR contractor is not involved in the reuse project.

#### **§ 9.2.4 Governing Law**

This Agreement and all other contract documents referenced herein and elsewhere, shall be construed and enforced in accordance with the laws of the State of Louisiana. The sole venue for any legal action arising under this Agreement shall be the Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana. This provision shall survive the termination of this Agreement.

#### **§ 9.2.5 Assignment**

CMAR contractor shall not assign, pledge, or transfer its duties, rights or obligations in this Agreement, in whole or in part, without first obtaining the prior written consent of the Owner. Any attempt by CMAR contractor to assign this Agreement, in whole or in part, without the prior written consent of the Owner shall render the assignment null and void.

### **ARTICLE 10 TERMINATION OR SUSPENSION**

#### **§ 10.1 Termination Prior to Establishing Guaranteed Maximum Price (GMP)**

**§ 10.1.1** Prior to execution of Part B: construction services Agreement establishing the GMP, the Owner may terminate this Contract at any time without cause, and the CMAR contractor may terminate this Contract, for any of the reasons described in Section 14.2 of AIA A201–2017, as modified by Owner. The Owner may, at any time, terminate this Agreement, in whole or in part, for the Owner’s convenience and without cause. Termination by the Owner under this subparagraph shall be by notice of termination delivered to the CMAR contractor specifying the extent of termination and the effective date thereof.

**§ 10.1.2** If the Owner or CMAR contractor terminates this Contract pursuant to this Section 10.1 prior to commencement of construction services, the CMAR contractor shall be equitably compensated for Part A: pre-construction services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1 and shall not include unrealized profit and/or overhead.

**§ 10.1.3** If the Owner or CMAR contractor terminates this Contract pursuant to this Section 10.1 after commencement of the Part B: construction services, the CMAR contractor shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- .1** Take the cost of the Work, including General Conditions, incurred by the CMAR contractor.
- .2** Add the CMAR contractor's fee computed upon the cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the CMAR contractor's fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum fee as the cost of the Work at the time of termination bears to a reasonable estimate of the probable cost of the Work upon its completion.
- .3** Subtract the aggregate of previous payments made by the Owner on account of the construction phase.

The Owner shall also pay the CMAR contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the CMAR contractor which the Owner elects to retain and which is not otherwise included in the cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the CMAR contractor shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the CMAR contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the CMAR contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the CMAR contractor with the Owner's written approval prior to the execution of Part B: construction services Agreement shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the CMAR contractor with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a cost of the Work had this agreement not been terminated, the CMAR contractor shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the CMAR contractor the costs necessarily incurred by the CMAR contractor by reason of such termination.

### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price (GMP)**

Subsequent to execution of Part B: construction services Agreement, the contract may be terminated as provided in Article 14 of A201-2017, as modified by Owner.

**§ 10.2.1** In the event of such termination by the Owner, the amount payable to the CMAR contractor pursuant to Section 14.1 of A201-2017, as modified by Owner, shall not exceed the pro-rated and documented amount the CMAR contractor would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** In the event of such termination by the CMAR contractor, the amount to be paid to the CMAR contractor under Section 14.2 of A201-2017, as modified by Owner, shall not exceed the pro-rated and documented amount the CMAR contractor would have been entitled to receive under Sections 10.1.2 and 10.1.3 of this Agreement. The CMAR contractor fee shall be calculated based on the percentage of Work completed.

### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of A201-2017, as modified by Owner; in such case, the GMP, if established, shall be increased as provided in Section 14.3.2 of A201-2017, as modified by Owner, except that the term "cost of performance of the Contract" in that Section shall be understood to mean the cost of the Work and the term "profit" shall be understood to mean the CMAR contractor's fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

## **ARTICLE 11 OTHER CONDITIONS AND SERVICES**

### **§11.1 Services to be Performed**

CMAR contractor shall perform Part A: pre-construction services in accordance with the terms and conditions of this Agreement and the other contract documents. CMAR contractor shall perform Part B: construction services with its subcontractors including all Work and services necessary to complete the Project in accordance with the Owner's construction documents (drawings, specifications, addenda, instructions, approved authorization requests, etc). CMAR contractor shall provide all necessary labor, materials, equipment, tools and services required to complete the Project in accordance with the contract documents. CMAR contractor agrees that time is of the essence and further agrees to take all reasonable steps to avoid delays.

### **§ 11.2 Review of Site and Drawings**

CMAR contractor shall inspect jobsite, all existing conditions, and review carefully all construction documents (drawings, specifications, addenda, instructions, surveys and test results) prior to commencement of the Work. CMAR contractor shall take field measurements of existing conditions and compare the existing conditions with the information contained in the drawings and specifications. CMAR contractor shall promptly notify the Owner and Designer of any errors or discrepancies in the drawings or specifications which may affect the Work. CMAR contractor shall not receive any additional payments or compensation for Work or services which reasonably could have been avoided by reviewing carefully all construction documents or by inspecting the Project sites and the existing conditions.

### § 11.3 Work Area

CMAR contractor shall ensure that the job site and surrounding area are kept reasonably free from trash and waste building material. CMAR contractor shall ensure that the job site and surrounding areas are cleaned at least daily in accordance with the Owner's requirements. If, after receiving written notice of its failure to maintain a clean work site, CMAR contractor fails to adhere to the requirements of the Owner regarding trash removal and clean-up, the Owner may use its own or contracted personnel to clean the site and surrounding area at the CMAR contractor's sole expense. Such amounts may be deducted from CMAR contractor's payment.

### § 11.4 Safety Responsibility

CMAR contractor shall be solely responsible for job site safety and shall report any and all job site accidents, including both injury accidents and non-injury accidents, to the Owner immediately after the accident becomes known to the CMAR contractor. CMAR contractor shall have full and sole authority for all safety programs and precautions in connection with the Work. CMAR contractor shall use all reasonable efforts to protect the Owner against any deviations or defects in the completed construction Work. CMAR contractor shall use all reasonable efforts to protect the Owner, students, faculty, employees and other staff, and visitors from personal injury and property damage. CMAR contractor shall have full authority to take any action whatsoever on the site regarding safety precautions and procedures. CMAR contractor shall adhere to all construction safety requirements, the Owner's Interim Life Safety Measures and Minimum Contractor Requirements, incorporated into this Agreement by reference, and the Owner's Infection Control Risk Assessments (ICRA) policies and procedures when performing Work pursuant to this Agreement. The Owner maintains a tobacco free environment. **CMAR contractor shall ensure its personnel and subcontractors observe this tobacco free requirement at all times** whenever on the Project site.

**§ 11.5 OSHA:** All work, services, materials, supplies and equipment performed and/or furnished under the terms of this Agreement shall comply with the requirements and standards specified in the Williams-Steiger Occupational Safety and Health Act of 1970 (Public Law 91-596), as amended, as well all other applicable federal, state and local laws, codes and regulations. All services performed herein must comply with all State of Louisiana Codes.

### § 11.6 Key Personnel

Concurrent with the execution of this Agreement (contract), the CMAR contractor shall furnish to the Owner a list of the project team personnel that will have a principle role in administering this project. The following are considered "Key Personnel". The CMAR contractor shall ensure that these individuals are assigned to this Project as principle representatives / participants in the delivery of Part A: pre-construction services and Part B: construction services until project acceptance (substantial completion):

- Project Executive
- Project Manager
- General Superintendent
- Estimator
- Scheduler
- BIM Coordinator (where required by contract)
- MEP Coordinator

If for any reason reassignment of Key Personnel becomes necessary, any such reassignment shall be subject to Owner approval.

### § 11.7 Compliance with Laws and Regulations

CMAR contractor shall comply strictly with all local, state, and federal laws, orders and regulations applicable with its operation and the performance of the Work. This includes the obligation to comply with all regulations promulgated by state and local authorities and made applicable to the site. CMAR contractor shall comply with all rules, regulations, and policies regarding access to site or construction at the site.

Should a change to a code or regulations after award of this Agreement (contract) affect the cost to perform the Work, the contract sum shall be adjusted consistent with the provisions of this Contract, including all notices to and approvals by Owner.

**§ 11.7.1** The CMAR contractor shall not pay for any licenses, permits, inspections, and approvals required by any governmental authority for any part of the Work unless required due to the defective performance by CMAR contractor or subcontractors. CMAR contractor shall properly notify the Owner if the construction documents are at variance with requirements of any applicable law, ordinance, rule or regulation. The CMAR contractor shall require that its subcontractors comply with the provisions of this paragraph.

#### **§ 11.8 Inconsistent Acts Not Waived**

The failure of the Owner to insist in any one or more instances upon the strict performance of any of the CMAR contractor's obligations shall not constitute a waiver of its right to insist on that performance at any future time. The failure of the Owner to exercise any option it may possess under this Contract shall not waive the Owner's right to exercise that option at any time. An act or omission by the Owner that may be inconsistent with any of the Owner rights under this Contract shall not waive the Owner's right to exercise such rights. No waiver or modifications of any of the Owner right's under this Contract shall be construed as a waiver or modification of any other of the Owner's right under this Contract. If the Owner makes any payment to the CMAR contractor in a situation where the Owner knows or could reasonable have known that the CMAR contractor has breached any of its obligations under this Contract, that payment will not constitute a waiver of any of the Owner's rights with respect to that breach. No waiver, modification, or discharge or any provision of this Contract shall be deemed to have been made unless expressed in writing and signed by authorized representatives of both Parties.

#### **§ 11.9 Prohibition on Hiring/Contracting with Illegal Aliens**

In accordance with the provisions mandated by Louisiana R.S. §23.992 *et seq.*, CMAR contractor hereby certifies that it shall not: (1) knowingly employ or contract with an illegal alien to perform work under this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to the CMAR contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

**§ 11.9.1** CMAR contractor certifies that it has verified or attempted to verify through participation in the Basic Employment Verification Program ("Basic Pilot Program") administered by the United States Department of Homeland Security, Citizenship and Immigration Services, that its employees who are performing work under this Agreement are not illegal aliens (<https://www.vis-dhs.com/EmployerRegistration>). If CMAR contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement, CMAR contractor shall apply to participate in the Basic Pilot Program every three (3) months until CMAR contractor is accepted or this Agreement terminates, whichever is earlier. If the Basic Pilot Program is discontinued during the term of this Agreement, this requirement to participate in the Basic Pilot Program shall become null and void.

**§ 11.9.2** CMAR contractor shall not use the Basic Pilot Program as a tool for pre-employment screening of job applicants while performing services under this Agreement.

**§ 11.9.3** If CMAR contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, CMAR contractor shall be required to: (1) notify the Owner and the subcontractor within three (3) days that CMAR contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and (2) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that CMAR contractor shall not terminate the contract with the subcontractor if during such three (3) days, the

subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien to perform work under this Agreement.

**§ 11.9.4** CMAR contractor shall comply with any reasonable request by the Louisiana Department of Labor (“Department”) made in the course of an investigation that the Department is undertaking pursuant to its authority under Louisiana R.S. §23.992.

### **§ 11.10 Equal Opportunity**

CMAR contractor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, and national origin, veteran’s status, political affiliation, disabilities, or in accordance with an individual’s sexual orientation.

**§ 11.10.1** Any act of discrimination committed by the CMAR contractor, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Contract.

### **§ 11.11 Warranty**

CMAR contractor agrees to warrant the quality of the Work, materials and equipment provided for a period of twelve (12) months from the date(s) of substantial completion, except where longer periods for certain items are provided in the Project manuals or where a manufacturer’s warranty is for a longer period. CMAR contractor agrees to make all necessary repairs to the Work and to replace or repair any defective material and equipment during the warranty period. CMAR contractor agrees to transfer all equipment and manufacturer’s warranties to Owner for all equipment, material and products provided as part of the Project. Nothing in this paragraph shall be construed to waive or limit any other claims, actions or warranties as may be made or brought on behalf of the Owner. This paragraph shall not require CMAR contractor to repair or replace any Work, material or equipment damaged as a result of the negligence of the Owner.

### **§ 11.12 Discharge of Claims and Liens**

CMAR contractor agrees to maintain a lien-free Project for the benefit of the Owner. CMAR contractor shall take all action necessary to obtain the prompt discharge of any lien or claim, including a verified statement of claim, filed against the Owner or Project. If any lien or claim is filed against the Owner or Project, the CMAR contractor shall promptly, but in no event more than fifteen (15) consecutive calendar days after request and at its own cost, obtain the discharge and full release of the lien or claim by providing payment or filing a surety bond sufficient to discharge said lien or claim. If the CMAR contractor fails to take the action required by this Agreement to discharge a lien or claim, the Owner shall have the right, after consultation with the CMAR contractor, to initiate a concursus proceeding in a court of competent jurisdiction.

### **§ 11.13 CMAR Contractor is Not an Employee**

It is understood and agreed by and between the Parties that the status of the CMAR contractor shall be that of an independent contractor and it is not intended, nor shall it be construed, that the CMAR contractor or its employees, officers, subcontractors, or other personnel are to be considered employees or officers of Owner for any purpose whatsoever. CMAR contractor is a corporation and as such is responsible for the operational management, errors and omissions of its officers and employees. CMAR contractor shall at all times maintain control of and appropriately supervise its employees, officers and agents. The parties intend to act and perform as independent entities and the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the parties or between a party and the employees, agents or independent contractors of the other Party.

**§ 11.13.1** CMAR contractor understands that it and its employees, officers, suppliers, and subcontractors are not entitled to unemployment benefits, workers compensation benefits or any fringe benefits from Owner. CMAR contractor is obligated to pay federal, state and local income taxes on any monies earned pursuant to this Agreement.

#### **§ 11.14 Severability**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or non-enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement and this Agreement shall be enforced to the fullest extent permitted by law. The Parties agree to renegotiate in good faith those provisions of the Agreement invalidated so that an appropriate agreement may be maintained between the Parties.

#### **§ 11.15 Authorization**

Each party represents to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate or other action, and that all approvals and consents necessary to enter into this Agreement have been obtained, and that this Agreement is signed on its behalf by its duly authorized officer, agent or representative.

#### **§ 11.16 Debarment**

By signing this Agreement, CMAR contractor hereby represents and warrants to the Owner that neither it nor its directors, officers or employees are currently excluded, debarred, proposed for debarment, or otherwise ineligible to participate in general construction projects; nor have they been convicted of a criminal offense related to the provision of general construction services. CMAR contractor further agrees to notify the Owner within three (3) days should it or any of its directors, officers or employees becomes a debarred person during the term of this Agreement.

#### **§ 11.17 Survival of Certain Agreement Provisions**

The Parties agree that all terms, conditions and covenants of this Agreement, together with any exhibits and attachments hereto, which reasonably contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such expiration or termination and shall continue to be enforceable as provided herein.

#### **§ 11.18 Affiliated Entity**

The CMAR contractor shall not enter into any subcontract, contract, agreement, purchase order or any other arrangement of any kind ("Arrangement") for the furnishing of any portion of the materials, services, equipment rented for use on the project, equipment, tools, or any portion of the Work with any party or entity if such party or entity is an "Affiliated Entity", as defined below, unless prior to entering into such Arrangement it has been approved in writing by the Owner, after full written disclosure by the CMAR contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity having common ownership or management with the CMAR contractor or with respect to which the CMAR contractor has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the CMAR contractor wherein the CMAR contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent, or shareholder.

#### **§ 11.19 Construction**

Each party has had the opportunity to review and negotiate this Agreement as part of an arms-length transaction, and therefore this Agreement shall be interpreted and construed according to its fair meaning without consideration as to which party drafted it.

#### **§ 11.20 Louisiana Law Applicable / Exclusive Venue 19th Judicial District**

This Contract shall be governed by and interpreted pursuant to the laws of the State of Louisiana. The Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana shall be the exclusive venue for bringing any action involving disputes arising under or otherwise involving the work of this Contract or any subcontract executed pursuant to this Contract. It is explicitly agreed that this Contract does not grant either party the right to demand arbitration or mediation.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1 Entire Agreement**

This document, together with all other contract documents as first defined above, constitute this Agreement and the full understanding of the Parties with respect to the subject matter hereof, and a complete and exclusive statement of the terms of their agreement, and no terms, conditions, understandings or agreement purporting to amend, modify, vary or waive the terms of this Agreement shall be binding unless made in writing and signed by an authorized representative of each Party. This Agreement supersedes all prior written and oral agreements regarding the subject matter hereof. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other contract document or attachment or exhibit thereto, including any AIA Document, the terms and conditions of this Agreement shall govern and control.

**§ 12.2 Anti-Boycott Provisions**

In accordance with Executive Order Number JBE 2018-15, effective May 22, 2018, for any contract for \$100,000 or more and for any contractor with five or more employees, CMAR contractor, or any subcontractor, shall certify it is not engaging in a boycott of Israel, and shall for the duration of this contract, refrain from a boycott of Israel. The State reserves the right to terminate this contract if the CMAR contractor, or any subcontractor, engages in a boycott of Israel during the term of the contract.

This Agreement entered into as of the day and year first written above.

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATION**

**WITNESSES:**

\_\_\_\_\_  
Owner Witness #1

BY: \_\_\_\_\_  
ROGER E. HUSSER, JR.  
FP&C DIRECTOR

\_\_\_\_\_  
Owner Witness #2

\_\_\_\_\_  
CMAR Contractor Witness #1

BY: \_\_\_\_\_  
CMAR CONTRACTOR

\_\_\_\_\_  
CMAR Contractor Witness #2