Agreement between the Owner and the Construction Manager at Risk

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION

Project (short title): HMS Career Technical Education Center   Contract No.: 1920-06
HMS CTEC
Hobbs, New Mexico

Owner’s MACC is __________________                 Owner’s Target GMP is ________________

Distribution to:

☐ District Representative (original)
☐ Construction Manager at Risk
☐ Design Professional (copy)
☐ Other __________________________

This Agreement entered into this ______ day of ____________, 20___, by and between the parties as follows:

THE OWNER:
HOBBBS MUNICIPAL SCHOOLS
1515 E SANGER
HOBBS, NM 88240
Telephone: 575.433.0100

and, hereinafter “Owner” and,

PSFA ☐ IS ☒ IS NOT a Co-Owner in this Agreement.

THE CMAR:
(NAME OF FIRM)
ADDRESSES 1)
ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
Telephone: (505) (PHONE)
Fax: (505) (FAX NUMBER)

DESIGN PROFESSIONAL OF RECORD:
BARRY NEBHUT
STANTEC ARCHITECTURE
3001 BEE CAVES ROAD,
SUITE 300
AUSTIN, TX 78746-5590
Telephone: 512.867.6106
Email: barry.nebhut@stantec.com
At the time of this Agreement, there is no State funding in this Project and the Public School Facilities Authority (PSFA) is not Co-Owner and any reference to the PSFA is effectively removed from the Construction Documents.

**RECITALS**

WHEREAS, the District, otherwise known as the Owner, has entered into Agreement with the PSCOC and its Public School Facilities Authority (PSFA) to act as Co-Owner, oversee and manage the work and make direct payment of Owner-approved expenses;

WHEREAS, the Owner may also oversee and manage the work and make direct payment of Owner-approved expenses in collaboration and agreement with the PSFA;

WHEREAS the Owner, through its School Board, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 and 22-5-4, NMSA 1978; and

WHEREAS the Owner has let this contract according to the established State purchasing procedures for contracts of the type and amount let.

The OWNER and the CONTRACTOR agree as set forth below.
# AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

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EXHIBIT A  GMP Amendment to the Agreement Between

The Owner and the CM at Risk

ATTACHMENT 1 Summary Matrix of Cost Allocation

EXHIBIT B – Preconstruction Work Plan  (Attach Section 00_5419 form)
THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

- Agreement between Owner and CMAR
- MACC Verification and Proposal Bond
- Performance Bond(s)
- Labor and Material Payment Bond(s)
- Agent's Affidavit
- Certificate(s) of Insurance
- Assignment of Antitrust Claims
- Notice of Award
- Notice(s) to Proceed
- Conditions of the Agreement (General, Supplementary, and Other Conditions)
- Drawings
- Specifications
- All Addenda Issued Prior to and All Amendments and Modifications Issued after Execution of This Agreement

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

Exhibit A - Draft Form of GMP Amendment
Attachment 1 – Summary Matrix of Cost Allocation
Exhibit B – Preconstruction Work Plan
ARTICLE 1
CONSTRUCTION MANAGER AT RISK
DEFINITIONS

Except as expressly defined or modified below or elsewhere in this Contract, all terms shall have the meanings set forth in the General Conditions of the Construction Manager at Risk Agreement (General Conditions). The terms below are expressly defined as follows:

1.1 Affiliate. Affiliate shall mean any subsidiary of Construction Manager at Risk, and any other entity in which Construction Manager at Risk has a financial interest or which has a financial interest in Construction Manager at Risk (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls Construction Manager at Risk).

1.2 Allowances. Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.

1.3 Amendment. Amendment shall mean a written modification of this Contract to establish the GMP, and without limitation to any Early Work Amendments, to allow phasing, that will culminate in a final GMP Amendment that establishes within the limitations of the agreed project MACC not withstanding any modifications to the MACC in accordance with Paragraph 1.17.

1.4 Construction Manager at Risk Field Work. Construction Manager at Risk Field Work shall mean customary layout, surveying, hoisting, safety enforcement, provisions of toilet facilities, temporary heat, trash removal, clean up, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 11.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the Construction Manager at Risk has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, (ii) such Work is identified as Construction Manager at Risk Field Work in monthly billings and (iii) Construction Manager at Risk receives prior approval of Owner’s Representative as to the scope of such Construction Manager at Risk Field Work.

1.5 CM Services. CM Services shall have the meaning given in Article 3.3 below.

1.6 Construction Documents. Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Proposal Forms, Agreement Forms, Wage Rates and
Addenda that will be incorporated into the Construction Contract and all required
documents for the advertisement, bidding, selection, award, construction and administration
of the Construction Documents for the Project must be in conformance with the New
Mexico Procurement Code.

1.7 **Construction Phase.** The Construction Phase shall mean the period commencing on the
Owner's execution of a GMP Amendment or Early Work Amendment, together with the
earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or
(ii) execution of a subcontract or issuance of a purchase order for materials or equipment
required for the Work.

1.8 **Construction Phase Services.** Construction Phase Services shall mean all of the Work
other than the Preconstruction Phase Services.

1.9 **Contract Documents.** Contract Documents shall have the meaning given in Article 1 of
the General Conditions.

1.10 **Design Development Documents.** Design Development Documents shall have the
meaning given in the General Conditions of the Agreement between the Owner and the
Design Professional for this Project.

1.11 **Early Work.** Early Work shall mean Construction Phase Services authorized by
Amendment that the parties agree should be performed in advance of establishment of the
GMP. Permissible Early Work shall require written Owner authorization and be limited to:
early procurement of materials and supplies; early release of bid or proposal packages
for site development and related activities; and any other advance work related to critical
components of the Project for which performance prior to establishment of the GMP will
materially affect the critical path schedule of the Project.

1.12 **Early Work Amendment.** Early Work Amendment shall mean an Amendment to this
Contract executed by and between the parties to authorize Early Work.

1.13 **Fixed Cost for Specified General Conditions Work.** Fixed Cost for Specified General
Conditions Work (SGC Work) shall mean the fixed sum proposed by the Construction
Manager at Risk for this work in its response to Request for Proposal. Specified General
Conditions Work is defined in Article 6.5.

1.14 **Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum
Price of this Contract, as stated in dollars within the GMP Amendment, as determined in
accordance with Article 6, and as it may be adjusted from time to time pursuant to the
provisions of this Contract.

1.15 **GMP Amendment.** GMP Amendment shall mean an Amendment to this Contract,
issued in the form of Exhibit A and executed by and between the parties, to establish the
GMP and identify the GMP Supporting Documents for Construction Phase Services.

1.16 **GMP Supporting Documents.** GMP Supporting Documents shall mean the documents
referenced in the GMP Amendment as the basis for establishing the GMP. The GMP
Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.

1.17 **MACC Adjustment.** MACC Adjustment is defined as a change in the MACC which occurs after award of the Agreement Between the Owner and the Construction Manager at Risk but before the execution of the GMP Amendment in accordance with Article 7.1 of this Agreement.

1.18 **MACC Reconciliation.** MACC Reconciliation is defined as the process by which the Construction Manager at Risk and the Design Professional determine the Probably Construction Cost at the end of the Schematic and Design Development phases in accordance with Article 7.1 of this Agreement.

1.19 **MACC Verification.** Construction Manager at Risk verified the project MACC as part of a proposal to enter into this Agreement. That verification was based upon information the CMAR deemed sufficient as to allow general and broad unit pricing and to provide the Proposal Bond that holds the CMAR accountable to maintaining the MACC until execution of the Guaranteed Maximum Price Amendment.

1.20 **Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the date of this Contract and ending upon commencement of the Construction Phase; provided that if the Owner and Construction Manager at Risk agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

1.21 **Preconstruction Phase Services.** Preconstruction Phase Services shall mean all services described in Article 3.1, and any similar services described in the Request for Proposals, including such similar services as are described in the Construction Manager at Risk’s Response to the Request for Proposals to the extent they are accepted by Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.

1.22 **Schematic Design Documents.** Schematic Design Documents shall have the meaning given in the General Conditions of the Agreement between the Owner and the Design Professional where the Method of Construction is the Construction Manager at Risk for this Project.

1.23 **Scope Change Following GMP.** Scope Change Following the GMP Amendment shall mean only (i) changed site conditions not reasonably inferable from information available to CMAR at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under this Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to Owner of the Allowance items exceeds the total amount of the Allowances).
1.24 **The Cost of the Work.** The Cost of the Work is the estimated cost to complete the Work for the Project as described in the plans and specifications and in the GMP Amendment including Construction Manager at Risk Contingency, but not including preconstruction services fee, the fixed cost for Specified General Conditions, Construction Manager at Risk Fee or New Mexico Gross Receipts Tax (NMGRT).

1.25 **User Representative.** The School District Staff or individual designated by the Owner to represent the needs of the facility and students or for which the project is being constructed.

1.26 **Owner:** Defined by Paragraph 2.1.2 of the General Conditions of the Construction Manager at Risk Agreement.

**ARTICLE 2
CONTRACT DOCUMENTS**

2.1 **Contract Documents.** For valuable consideration as stated below, Owner and the Construction Manager at Risk agree to the terms of the contract that are set forth in the Contract Documents. As used in the General Conditions, the "Contract" shall mean this CM at Risk Contract.

2.2 **Effective Date.** This Construction Manager at Risk Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and Owner has received all necessary approvals, including approval for legal sufficiency.

2.3 **The Contract; Order of Precedence.** This Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Article 1.2.5 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

**ARTICLE 3
WORK OF THIS CONTRACT**

3.1 **Preconstruction Phase Services.** The Construction Manager at Risk agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Qualifications attached as Exhibit C. Commencement of the Construction Phase shall not excuse Construction Manager at Risk from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CM Services performed during the Preconstruction Phase.
3.1.1 The Construction Manager at Risk shall provide a preliminary evaluation of the Owner’s program and budget requirements, each in terms of the other.

3.1.2 The Construction Manager at Risk shall provide the following services relating to design and construction tasks:

(a) The Construction Manager at Risk shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.

(b) The Construction Manager at Risk shall jointly schedule and attend regular meetings with the Design Professional and Owner’s Authorized Representative. The Construction Manager at Risk shall consult with the Owner and Design Professional and User Representative regarding site use and improvements, and the selection of materials, building systems and equipment.

(c) The Construction Manager at Risk shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

(d) The Construction Manager at Risk shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Documents.

(e) Construction Manager at Risk shall review completed Schematic Design Documents, Design Development Documents, and Construction Documents and suggest modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain the MACC and to improve completeness and clarity.

3.1.3 The Construction Manager at Risk shall provide the following services related to the Project schedule:

(a) The Construction Manager at Risk shall prepare, and periodically update, a preliminary Project schedule for the Design Professional’s and Owner’s review and approval.

(b) The Construction Manager at Risk shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Design Professional, and Construction Manager at Risk. As design proceeds, Construction Manager at Risk shall update the preliminary Project schedule 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, and Owner’s occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner’s prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager at Risk shall make appropriate recommendations to the Owner and Design Professional.

3.1.4 The Construction Manager at Risk shall make recommendations to Design Professional and Owner regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project.

3.1.5 The Construction Manager at Risk shall provide the following services relating to cost estimating:

(a) The Construction Manager at Risk shall within fourteen (14) days of Notice of Award prepare a Statement of Probable Construction Cost utilizing area, volume or similar conceptual estimating techniques for review by the Design Professional and approval by the Owner. The Statement of Probable Construction Cost shall include appropriate contingencies for design, bidding or negotiating, price escalation and market factors.

(b) When Schematic Design Documents have been prepared by the Design Professional, the Construction Manager at Risk shall, within fourteen (14) days, prepare a more detailed Statement of Probable Cost in a Level 1 Uniformat estimate or in another format approved by the Owner, for review by the Design Professional and approval by the Owner. During the preparation of the Design Development Documents, the Construction Manager at Risk shall, within seven (7) days update and refine this estimate at appropriate intervals agreed to by the Owner, Design Professional and Construction Manager at Risk.

(c) When Design Development Documents have been prepared by the Design Professional, the Construction Manager at Risk shall, within fourteen (14) days, prepare a detailed Statement of Probable Construction Cost with supporting data in a Level 2 Uniformat estimate or other format approved by the Owner for review by the Design Professional and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager at Risk shall, within seven (7) days update and refine this estimate at appropriate intervals agreed to by the Owner, Design Professional and Construction Manager at Risk.

(d) If any Statement of Probable Construction Cost submitted to the Owner and Design Professional exceeds previously approved Statements of Probable Construction Cost or the Owner’s budget, the Construction Manager at Risk shall
make appropriate recommendations to the Design Professional and Owner to reduce the Probable Construction Cost.

(e) Construction Manager at Risk shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.

(f) The Construction Manager at Risk shall work with the Design Professional and Owner to develop a GMP within the Target GMP as stated in the Request for Proposals unless a change in the Target GMP is approved by the Owner. Upon completion of the Construction Documents, the Construction Manager at Risk shall, in consultation with the Design Professional, furnish to the Owner a final and detailed Level 3 UniFormat probable cost estimate, including district versus state funding in accordance with the Statewide Adequacy Standards and district match requirements.

3.1.6 To accomplish the objective set for in paragraph 3.1.5 (d) above, the Construction Manager at Risk shall provide consultation throughout the Preconstruction Phase including, but not limited to the furnishing of all necessary Value Engineering services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the Owner and the Design Professional, the Construction Manager at Risk shall:

(a) Formulate and evaluate alternative design, systems, and materials;

(b) Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives;

(c) Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;

(d) Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the Owner and the Design Professional agreed to accept the alternative.

(e) In addition to the reports discussed in subparagraph (d) above, the CM at Risk shall maintain a running log of all Value Engineering alternatives considered throughout the entire preconstruction period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the Owner and the Design Professional have agreed to incorporate the alternative.

3.1.7 The Construction Manager at Risk shall perform the following tasks related to subcontracting:
(a) The Construction Manager at Risk shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the Owner and Design Professional for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.

(b) The Construction Manager at Risk shall provide input to the Owner and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Construction Manager at Risk shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. Construction Manager at Risk shall advise Owner on subcontracting opportunities for Minority and Women Owned Business Enterprises.

3.1.8 The Construction Manager at Risk shall recommend to the Owner and Design Professional a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the Construction Manager at Risk upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The Construction Manager at Risk shall expedite the delivery of long-lead time items.

3.1.9 The Construction Manager at Risk shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or GMP Amendment, the Construction Manager at Risk shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Construction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
3.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment, without exceeding a not-to-exceed budget, a not-to-exceed guaranteed maximum price, or a fixed price ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary Owner or Regulatory approvals where required. If the Early Work Price is a not-to-exceed budget, then Construction Manager at Risk shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the Construction Manager at Risk Fee, does not exceed the Early Work Price; however if Construction Manager at Risk performs Early Work with a cost in excess of the Early Work Price, the Construction Manager at Risk shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the Construction Manager at Risk shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.

3.2.4 Prior to commencement of any Construction, and in any event not later than mutual execution of the GMP Amendment, Construction Manager at Risk shall provide to Owner a full performance bond and a payment security bond as required by Article 11.5 of the General Conditions in amounts equal to the value of the Amendment(s). If an Early Work Amendment is executed, Construction Manager at Risk shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. Construction Manager at Risk shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, Construction Manager at Risk shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

3.2.5 Prior to commencement of any Construction, either for Early Work or GMP Amendment Work, CM at Risk shall provide to Owner the Combined List of Subcontractors and Anti-Trust Form.

3.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, the Construction Manager at Risk shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, User Representative, Design Professional and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

3.3.1 Providing all Preconstruction Phase Services described above;

3.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions,
coordinating and communicating the activities of the Construction Principals to all parties during the Construction Phase.

3.3.3 Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

3.3.4 Working with the Owner, the Owner Representative, and the Design Professional to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;

3.3.5 Providing Value Engineering ("VE") services ongoing throughout the Project. Construction Manager at Risk shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. Construction Manager at Risk acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;

3.3.6 Holding and conducting periodic meetings with the Owner, User Representative and the Design Professional to coordinate, update and ensure progress of the Work;

3.3.7 Submitting monthly written report(s) to the Owner. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the Construction Manager at Risk or as requested by the Owner;

3.3.8 Preparing Daily Reports in the format of the report as outlined in General Conditions Article 3.10.5.

3.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CONSTRUCTION MANAGER AT RISK shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional at regular intervals;

3.3.10 Cooperating with any and all consultants hired by Owner;

3.3.11 Cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;

3.3.12 Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;
3.3.13 Incorporating Owner HVAC and Controls Performance Assurance Program contractor, scheduled activities and inspections into the Project schedule and coordinating Subcontractors required to participate in the schedule;

3.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

**ARTICLE 4**

**RELATIONSHIP AND ROLES OF THE PARTIES**

4.1 **Independent Contractor.** The Construction Manager at Risk is an independent contractor and not an officer, employee, or agent of Owner.

4.2 **Performance of Work.** The Construction Manager at Risk covenants with Owner to cooperate with the Design Professional and Owner and utilize the Construction Manager at Risk’s professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 **Design Consultants.** Owner has a separate contract with the Design Professional related to the Project. The Construction Manager at Risk agrees to support Owner's efforts to create a collaborative and cooperative relationship among the Construction Manager at Risk, Design Professional, other Project consultants, Owner’s Representative, and the User Representative.

4.4 **Forms and Procedures.** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The Construction Manager at Risk agrees to abide by those procedures and use those forms.

4.5 **CONSTRUCTION MANAGER AT RISK's Project Staff.** The Construction Manager at Risk’s Project staff shall consist of the following personnel:

4.5.1 **Project Manager and Assistant Project Manager:** __________ shall be the Construction Manager at Risk’s Project Manager and __________ shall be the Construction Manager at Risk’s Assistant Project Manager and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of Construction Manager at Risk and participate in all meetings throughout the Project term unless otherwise directed by Owner. Construction Manager at Risk represents that each of the Project Manager and Assistant Project Manager have authority to execute Change Orders and Contract Amendments on behalf of Construction Manager at Risk. *(Note to Spec Writer: This paragraph can be modified to reflect the staff proposed by the Construction Manager at Risk in its response to the Request for Qualifications. There may not be a designated Assistant)*
Project Manager: however, the Construction Manager at Risk may designate a Project Engineer, Preconstruction Services Manager and other personnel that are key to the success of the project. Those persons can be identified here or in paragraph 4.5.3 below.)

4.5.2 Job Superintendent: If Construction Phase Services are requested and accepted by Owner, [ ] shall be the Construction Manager at Risk’s on-site job superintendent throughout the Project term.

4.5.3 Other Key Persons: (List here by name and title.)

4.6 Key Persons. The Construction Manager at Risk’s personnel identified in Article 4.5, shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the Construction Manager at Risk intends to substitute personnel, a request must be given to Owner at least thirty 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the Construction Manager at Risk shall provide a transition period of at least fifteen 15 days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner.

(Note to Spec Writer: The object is to ensure that the Construction Manager at Risk provides the people it presented in the RFQ and Interviews and upon whose qualifications the Construction Manager at Risk was selected.)

ARTICLE 5
DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services (“Notice to Proceed”). It is anticipated that the Notice to Proceed will be issued on or about November, 2019. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

5.2 Completion of Project. The Construction Manager at Risk shall achieve Substantial Completion of the entire Work not later than June 30, 2021 and shall achieve Final Completion not later than August 31, 2021.

5.3 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Article 8 of the General Conditions, Owner and Construction Manager at Risk agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. Construction Manager at Risk agrees to make every effort to recover "lost" time.
5.5 **Liquidated Damages.** The Construction Manager at Risk acknowledges that the Owner will sustain damages as a result of the Construction Manager at Risk’s failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. The Construction Manager at Risk and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

5.5.1 FOR SINGLE PHASE PROJECT: **Liquidated Damages** shall be $5,000 for each day that Substantial Completion exceeds the required date of Substantial Completion.

5.5.2 FOR MULTI PHASE PROJECTS. The Project may include multiple phases as determined by construction documents and construction schedule. Liquidated Damages for Substantial Completion of each Phase shall be $5,000 for each day that Substantial Completion of Each Phase exceeds the required date of Phase Substantial Completion. Liquidated Damages for Substantial Completion of the entire Project (i.e., all phases) shall be $5,000 for each day that Substantial Completion of the entire Project exceeds the required Substantial Completion date for the entire Project stated above. Liquidated Damages shall be calculated independently for each phase and for the entire Project.

5.5.3 The CONSTRUCTION MANAGER AT RISK agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof and further agrees that Owner may deduct such sums from payments the Owner otherwise owes to CONSTRUCTION MANAGER AT RISK under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, CONSTRUCTION MANAGER AT RISK shall promptly pay any and all remaining sums due to the Owner upon demand.

5.6 Early Completion Incentive can be negotiated as the GMP amendment is completed.

**ARTICLE 6**

**CONTRACT SUM AND GMP**

6.1 **Contract Sum.** If a GMP Amendment or Early Work Amendment is executed, Owner shall pay the Construction Manager at Risk, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the Construction Manager at Risk Fee, the fixed Cost for Specified General Conditions Work, the actual Cost of the Work and NMGRT, but not exceeding the GMP or Early Work Amendments.

The GMP shall be determined in accordance with the formula set forth below and as described in Article 6.3. The Construction Manager at Risk Fee, Specified General Conditions and the Cost of the Work are defined in Articles 6.3 and 6.5. Costs in excess
of the GMP shall be paid by the Construction Manager at Risk without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order.

\[
\text{Preconstruction Fee} \ + \ \text{CONSTRUCTION MANAGER AT RISK Fee} \ + \ \text{Specified General Conditions} \ + \ \text{Cost of the Work} = \text{GMP + NMGRT}
\]

6.2 **Preconstruction Fee.** The not to exceed Preconstruction Fee shall be payable to Construction Manager at Risk on a cost reimbursement basis up to a maximum sum of \$_______ which shall cover constructability review, value engineering, cost estimating and all other Preconstruction Phase Services, as described in Article 3. If Construction Manager at Risk’s costs for provision of Preconstruction Phase Services exceeds the maximum Preconstruction Fee, Construction Manager at Risk shall pay such additional cost without reimbursement. Construction Manager at Risk shall not be entitled to any Construction Manager at Risk Fee upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that Owner may direct instead that any applied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to Construction Manager at Risk with respect to Preconstruction Services performed after execution of the GMP Amendment.

6.3 **Construction Manager at Risk Fee.** The Construction Manager at Risk shall submit a number on the Form of Proposal which represents the Construction Manager at Risk’s Fee stated as a percentage of the Cost of the Work. That fee shall be converted to a fixed dollar sum to be identified in the GMP Amendment, and shall be calculated as ___% of the negotiated Cost of the Work at the time of the establishment of the GMP. In making such calculation, the Cost of the Work shall exclude the Preconstruction Fee, the fixed cost for Specified General Conditions, the Construction Manager at Risk Fee itself, but shall include CM at Risk Field Work, Allowances, selected alternates, and reasonable Construction Manager at Risk contingencies as designated in the GMP Supporting Documents. The Construction Manager at Risk Fee shall include the following:

6.3.1 **All profit of the Construction Manager at Risk for this project.**

6.3.2 **All regional and home office overhead expenses, including labor and materials, travel, phone, facsimile, postage and other incidental office expenses attributed to work on this project that is not specifically identified in the Specified General Conditions Work.**

6.3.3 **All expenses of the Construction Manager at Risk, whether direct or through consultants, for participation in and the support of the subcontractor bidding process of the project that are not paid for as Specified General Conditions Work.**
6.3.4. All expenses of the Construction Manager at Risk to prepare for and participate in negotiations of the Guaranteed Maximum Price.

6.3.5. Other than New Mexico Gross Receipts Tax, the fee shall cover all taxes owed by the Construction Manager at Risk

6.4 Payment and adjustment of Construction Manager at Risk Fee.

6.4.1 Owner shall pay the Construction Manager at Risk Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the Construction Manager at Risk Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such Construction Manager at Risk Fee payments shall be credited against the Construction Manager at Risk Fee fixed therein.

6.4.2 Unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the Construction Manager at Risk Fee then in effect by multiplying the percentage shown in Article 6.3. by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the Construction Manager at Risk Fee shall be limited to the total Construction Manager at Risk Fee multiplied by the percentage of Work completed and accepted at the time of termination. The Construction Manager at Risk Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

6.5 Specified General Conditions Work (SGC Work). The Construction Manager at Risk shall submit a number on the Form of Proposal which represents the dollar amount for the “Specified General Conditions Work.” The Specified General Conditions Work shall consist of all requirements of the Construction Manager at Risk Contract, General Conditions and Division One so marked in Attachment 1 – SUMMARY MATRIX OF COST ALLOCATION and incorporated herein by reference as if set forth in full. In addition, Specified General Conditions Work shall include:

6.5.1 Wages and salaries of the Construction Manager at Risk’s project management, supervisory and administrative personnel stationed at the site.

6.5.2 Fringe benefit costs paid or incurred by the Construction Manager at Risk for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in Specified General Conditions Work.
6.5.3 That portion of premiums for insurance directly attributable to this Contract and for payment and performance bonds required by the General Conditions.

6.6 Payment of Fixed Cost for Specified General Conditions Work. Construction Manager at Risk shall be paid a fixed sum of $__________ as payment for the Specified General Conditions Work, including all associated labor, materials, and direct and indirect costs. The Fixed Cost for Specified General Conditions shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the Construction Phase.

6.7 Determination of the Guaranteed Maximum Price.

6.7.1 When Owner and Construction Manager at Risk mutually agree that the drawings and specifications are sufficiently complete for the Construction Manager at Risk to provide a Guaranteed Maximum Price for the Work, the Construction Manager at Risk shall, within fourteen (14) calendar days, deliver to Owner a proposed Guaranteed Maximum Price and GMP Supporting Documents for review and negotiation. If any actual subcontract offers are available at the time the GMP is being established, Construction Manager at Risk shall use those subcontract offers in establishing the GMP.

6.7.2 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the Construction Manager at Risk shall provide in the GMP for further development of the Plans and Specifications by the Design Professional that is consistent with the Contract Documents and reasonably inferable thereof. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

6.7.3 The Construction Manager at Risk shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:

(a) A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.

(b) A list of allowances and a statement of their basis.

(c) A list of the clarifications and assumptions made by the Construction Manager at Risk in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.

(d) The proposed GMP including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP.
(e) The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

6.7.4 The Construction Manager at Risk shall meet with the Owner and Design Professional to review the GMP proposal and the written statement of its basis. If the Owner or Design Professional discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager at Risk, who shall make appropriate adjustments to the GMP proposal, its basis or both.

6.7.5. Prior to the Owner's acceptance of the Construction Manager at Risk’s GMP proposal and issuance of the GMP Amendment and a Notice to Proceed, the Construction Manager at Risk shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.

6.7.6. The Owner shall authorize and cause the Design Professional to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the Construction Manager at Risk in accordance with schedules agreed to by the Owner, Design Professional and Construction Manager at Risk. The Construction Manager at Risk shall promptly notify the Design Professional and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.7.7. The GMP shall include the Construction Manager at Risk's contingency, a sum established by the Construction Manager at Risk for the Construction Manager at Risk's exclusive use to cover additional development of Plans and Specifications which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.

6.7.8. The Construction Manager at Risk shall work with the Design Professional and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Design Professional to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.

Notwithstanding the level of detail represented in the GMP Supporting Documents, the Construction Manager at Risk shall represent and warrant that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.

6.8. **Failure to Furnish an Acceptable GMP.** If the CMAR does not furnish a Cost for the Work, that when added to its proposal for Construction Manager at Risk Fee and Specified General Conditions, its negotiated Preconstruction Fee, NMGRT, and all other costs resulting in a GMP that is within Owner's Target GMP Range bound by the MACC, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Contract.
without liability, and the Construction Manager at Risk shall not receive additional compensation beyond the Preconstruction Fee under this Contract and sums due under any Early Work Amendment.

6.9. **Acceptance of GMP.** Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment.

6.10. **Owner Savings.** If the sum of the Preconstruction Fee, plus the Construction Manager at Risk Fee, plus the Specified General Conditions, plus the actual and final Cost of the Work is less than the GMP, the savings shall accrue to the Owner.

6.11. **Allowance Work.**

6.11.1 Construction Manager at Risk shall not perform any Allowance Work without prior execution by Owner of a Change Order approving the price and Specifications for the Allowance Work.

6.11.2. Owner shall be entitled to apply any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.

6.11.3. If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, Construction Manager at Risk shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.

6.11.4. The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.

6.11.5. If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.

6.12. **Reallocating Projected Cost Under-runs after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, Construction Manager at Risk shall review projected costs and provide the Owner with a buy-out status report, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by Construction Manager at Risk to establish the GMP. Construction Manager at Risk shall include with its report any underlying documentation requested by Owner used to develop or support such report. Construction Manager at Risk shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the remaining subcontracts to be awarded. If there is a savings as a result of the subcontract buyout, the Construction Manager at Risk may retain 2% of the cost of the work as a GMP Contingency to be used by the Construction Manager at Risk during construction and shall return the balance to the Owner in a change order together with the Percent Fee multiplied by the savings, or utilize the savings to fund additive
alternates or other work as directed by the Owner. The Construction Manager at Risk may use the GMP Contingency for costs related to subcontractors claims or charges that result from mistakes or omissions in the subcontract buyout, interferences between subcontractor and the Construction Manager at Risk, interference between subcontractors, and the failure of the Construction Manager at Risk to coordinate the work it self-performs with the work of other subcontractors. The Construction Manager at Risk’s use of the GMP Contingency shall be approved in advance by the Owner’s Representative. Any funds remaining in the GMP Contingency at Final Completion shall be returned to the Owner.

ARTICLE 7
CHANGES IN THE WORK

7.1 Changes in the Work prior to the execution of the GMP Amendment. Following the Programming Phase, the Construction Manager at Risk shall prepare a Statement of Probable Cost. The Construction Manager at Risk shall include in the statement appropriate contingencies for design, bidding or negotiating, price escalation and market conditions. The Design Professional shall use the Statement of Probable Construction Cost in development of subsequent design submissions.

7.1.1 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction for design and pricing purposes. At the conclusion of the Schematic Design Phase, the Design Professional shall cooperate with the Construction Manager at Risk in determining, with Owner approval, what materials, equipment, component systems, and types of construction are to be included in subsequent design submissions and the Construction Documents to bring construction cost within the MACC.

7.1.2. At each design phase, and periodically as deemed appropriate by the Construction Manager at Risk to maintain the MACC and GMP accordingly, the Design Professional shall provide to the Construction Manager at Risk, four (04) sets of construction documents. The Construction Manager at Risk will prepare a Statement of Probable Construction Cost within fourteen (14) days of each of the Design Professional’s phase submittals, and cost estimates within seven (7) days of any partial submittals. If the Construction Manager at Risk’s Statement of Probable Construction Cost at the end of each of the Schematic Design and Design Development Phases exceed the established Maximum Allowable Construction Cost, the Construction Manager and Design Professional shall propose cost reductions acceptable to the Owner to bring the project within budget. These joint cost management recommendations shall be provided within fourteen (14) days of the Construction Manager at Risk’s statements or estimates. Redesign necessary to bring the project within the established MACC through the end of the Schematic Design Phase shall be considered Basic Service and not an Additional Service. Adjustments to the MACC and, post Design Development Phase Additional Services shall be in accordance with paragraph 7.1.4 below.

7.1.3. When the MACC is exceeded in any subsequent submittal prior to the negotiated maximum price and execution of the GMP Amendment, the Owner may:
(a) Pending funds availability, give written approval of an increase in the MACC; or
(b) Cooperate with the Design Professional and the Construction Manager at Risk in revising the Project Scope to reduce the Probable Construction Cost; or
(c) Terminate this Agreement in accordance with Article 14.

7.1.4. If the Owner elects to reduce the Probable Construction Cost following the completion, and approval by the Owner, of the Design Development or Construction Document Phases, the Owner shall cooperate with the Design Professional and the Construction Manager at Risk in revising the quality and Scope of the Project; and at the expense of the Construction Manager at Risk, the Design Professional shall, as an Additional Service, modify the Drawings and Specifications as necessary to bring the Probable Cost within the MACC; except when the excess is due to changes initiated by the Owner or the Design Professional in scope, basic systems, or the kinds and quality of materials, finishes or equipment outlined by the Construction Manager at Risk in its Statement of Probable Cost prepared at the end of the Schematic Design Phase.

7.2 Adjustments to GMP after the Execution of the GMP Amendment but before Construction commences. Adjustments to the GMP after execution of the GMP Amendment but before construction commences may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

7.2.1 Construction Manager at Risk shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of Construction Manager at Risk, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.

7.2.2 Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). Construction Manager at Risk shall deliver any such GMP Change Request to Design Professional and Owner’s Representative promptly after becoming aware of any Scope Change if, in Construction Manager at Risk’s opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

7.2.3 Construction Manager at Risk shall submit its GMP Change Requests as soon as possible, and Construction Manager at Risk shall not be entitled to claim a GMP increase unless Construction Manager at Risk submitted a GMP Change Request to Owner’s Representative and to Design Professional within the earlier of (a) fourteen calendar (14) days after Construction Manager at Risk has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which Construction Manager at Risk intends to claim a Scope Change; and (c) in any event, prior to Construction Manager at Risk’s signing of a subcontract that incorporates the Scope Change into the Work.
7.2.4 Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request.

7.2.5 Construction Manager at Risk shall work with Design Professional to reconcile all differences in its GMP Change Request with Design Professional within **seven (7) days** from the date of submission of the GMP Change Request. "Reconciled" means that the Construction Manager at Risk and Design Professional have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Design Professional's position. Construction Manager at Risk shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any Construction Manager at Risk claim for a GMP increase.

7.2.6 If the Reconciled GMP Change Request is not acceptable to Owner, Construction Manager at Risk agrees to work with the Owner and the Design Professional to provide a GMP Change Request that is acceptable to Owner.

7.2.7 Construction Manager at Risk agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Design Professional and Owner access and opportunity to view such documents at CONSTRUCTION MANAGER AT RISK's offices. Upon Owner's reasonable notice, CONSTRUCTION MANAGER AT RISK shall deliver two copies of such documents to Owner and Design Professional at any regular meeting or at the Site.

7.2.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the GMP increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the Construction Manager at Risk Fee, as proposed by the Construction Manager at Risk in its response to the Request for Proposals for the Project.

7.3 **Adjustments to the GMP after Construction begins.** Adjustments to the GMP required by Changes in the Work that occur after construction begins shall be determined by any of the methods listed in Article 7 of the General Conditions, unless pricing is based upon subcontractor bid pricing or unit pricing.

7.3.1 The overhead and profit markup for the Construction Manager at Risk on subcontractor bid pricing shall be limited to the Construction Manager at Risk Fee in Article 6.3.

7.3.2 The overhead and profit markup for the Construction Manager at Risk for all other changes in the Work that occur after construction begins shall be limited to the adjustment permitted under Article 7.2.5 of the General Conditions.

7.3.3 In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental markups provided for in Article 7 of the General Conditions.
7.3.4. **Execution by Owner.** If Design Professional is the Owner’s Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Design Professional has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

**ARTICLE 8**

**COST OF THE WORK**

8.1 **Cost of the Work.** The Cost of the Work is the amount, mutually agreed between the Owner and the Construction Manager at Risk that is required to complete the Work for the Project as described in the Contract Documents and the GMP Amendment through the life of the project, except for:

(a) Preconstruction Work;

(b) Construction Manager at Risk Fee;

(c) Fixed Amount for Specified General Conditions Work;

(d) Owner directed changes;

(e) Other changes due to design errors, unforeseen conditions, regulatory requirements at variance with the contract documents;

(f) New Mexico Gross Receipts Tax.

**ARTICLE 9**

**COSTS EXCLUDED FROM COST OF WORK**

(Not To Be Reimbursed)

9.1 **Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work:

9.1.1 Construction Manager at Risk's capital expenses, including interest on the Construction Manager at Risk's capital employed for the Work.

9.1.2 Any cost associated with the Project not specifically and expressly described in Article 8.

9.1.3 Costs due to the fault or negligence of the Construction Manager at Risk, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.

9.1.4 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
9.1.5 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.

9.1.6 Fines and penalties.

9.1.7 The cost of Construction Manager at Risk Field Work in excess of the fixed amount agreed for Construction Manager at Risk Field Work in the GMP.

9.1.8 Any costs in excess of the GMP

ARTICLE 10
DISCOUNTS, REBATES AND REFUNDS

10.1 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Construction Manager at Risk shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the Construction Manager at Risk shall make provisions so that they can be secured.

10.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of Article 10.1 shall be credited to Owner as a deduction from the Cost of the Work.

ARTICLE 11
SUBCONTRACTS AND OTHER CONTRACTS

11.1 General Subcontracting Requirements.

Other than Work for Preconstruction, Specified General Conditions Work and Work performed pursuant to Articles 11.4 or 11.5 of this Contract, Construction Manager at Risk shall subcontract the Work to Subcontractors other than the Construction Manager

11.2 CONSTRUCTION MANAGER AT RISK's Obligations under Subcontracts.

11.2.1 No use of a Subcontractor or supplier shall relieve the Construction Manager at Risk of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the Construction Manager at Risk shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The Construction Manager at Risk shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the Construction Manager at Risk and any such Subcontractor or supplier.
11.2.2 The Construction Manager at Risk shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. Construction Manager at Risk shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of Construction Manager at Risk to incorporate the provisions of this Contract in each subcontract. The Construction Manager at Risk shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

11.2.3 **Retainage from Subcontractors.** Payments to Subcontractors shall not be subject to retainage and shall be paid consistent with the provisions of the General Conditions for the Construction Manager at Risk Agreement.

**11.3 Subcontractor Selection.**

11.3.1 Unless otherwise provided under this Article 11, the selection of all Subcontractors and suppliers shall be made by competitive or negotiated Offers. Competitive Offers shall be made in a manner that will not encourage favoritism or substantially diminish competition. Negotiated Offers shall be conducted in a manner offering best value to the Owner. The process for making Competitive Offers shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

11.3.2 Construction Manager at Risk shall submit to Owner’s Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation the Owner’s authorized Representative will provide its comments within **seven (7) calendar days** of receipt of the documents for review. Construction Manager at Risk shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, Construction Manager at Risk shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up requested by Owner. The competitive process used to award subcontracts by the Construction Manager at Risk may be monitored by the Owner’s Representative; provided that such monitoring shall not excuse Construction Manager at Risk from compliance with the subcontracting requirements of this Contract. Construction Manager at Risk shall cooperate in all respects with Owner's monitoring. The Owner’s Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and Construction Manager at Risk shall provide him or her with a summary or abstract of all Offers in form acceptable to the Owner’s Representative, and copies of particular Offers if requested, prior to Construction Manager at Risk’s selection of Offerors. Prior to opening Offers, the Construction Manager at Risk agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of Construction Manager at Risk.
11.3.3 The following minimum requirements apply to the Subcontract solicitation process:

(a) The Construction Manager at Risk, in cooperation with the Owner and design professional, shall be responsible for the solicitation of the subcontractors, sub-subcontractors and suppliers as necessary, to submit offers for CMAR consideration of their portion of the work. In addition to offers to perform the work, the subcontractors, sub-subcontractors and suppliers shall be required to provide documentation that they are in fact a qualified, responsible Offeror, duly licensed and registered with the State of NM Department of Workforce Solutions.

(b) The Construction Manager at Risk may/shall conduct a pre-proposal meeting with potential Offerors to discuss the project scope of work and the CMAR method of construction. Potential Offerors will be advised that any subsequent award of a contract will be based on the qualifications of the Offeror and not price alone.

(c) The date, time, and location of the pre-proposal conference may be advertised in a local paper of circulation at a minimum of 10 days prior to the scheduled conference.

(d) Once all proposals have been considered, the Construction Manager at Risk shall prepare a report in writing to the Owner stating the proposed subcontract Offerors. The Owner and design professional shall review the report and respond in writing to any objections they may have to a particular Offeror. The Construction Manager at Risk shall be responsible for any investigations necessary to either confirm or deny the objection(s).

(e) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM at Risk shall time-stamp all Offers as received. If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM at Risk), prior written approval by Owner shall be required to accept the Offer.

(f) CM at Risk may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that CM at Risk determines meet the prequalification standards, with Owner’s prior written approval of such prequalification process.

(g) CM at Risk shall comply, and require Subcontractor compliance with, New Mexico Department of Workforce Solutions’ prevailing wage rates as specified in the Contract.

(h) Owner may at its sole discretion, require CM at Risk to re-solicit for Offers based on the same or modified documents.

(i) CM at Risk shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
(j) The CM at Risk will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and Owner shall be entitled to inspect such documentation on request.

(k) CM at Risk shall determine the lowest Offer for each solicitation that meets CM at Risk’s reasonable performance standards for the components of the Work at issue; provided that if CM at Risk determines it is unable to execute a suitable subcontract with such Offeror, CM at Risk may, with Owner’s prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4 below.

11.3.4 Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require CM at Risk’s agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; design-build work or, where an alternative contracting method that can be demonstrated to clearly benefit Owner.

11.3.5 Construction Manager at Risk shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. Such approval, or disapproval, will be provided within seven (7) calendar days of receipt of Notice of Award of any proposed Subcontract. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier. Any increased costs due to Owner's disapproval shall be cause for an increase in the GMP.

11.3.6 Construction Manager at Risk's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

11.4 CONSTRUCTION MANAGER AT RISK Field Work.

11.4.1 The Construction Manager at Risk or its Affiliate may provide Construction Manager at Risk Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

11.4.2 Except as provided in Article 11.4.1, any other portion of the Work proposed to be performed by Construction Manager at Risk or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Article 11.5.
11.5 **Subcontracting by CONSTRUCTION MANAGER AT RISK.**

11.5.1 The Construction Manager at Risk or its Affiliates may submit an Offer in accordance with Article 11.3 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the Construction Manager at Risk or such Affiliate.

11.5.2 For those items for which the Construction Manager at Risk or any of its subsidiaries intends to submit an Offer, such intent must be provided with the solicitation for Offers required by Article 11.3.3, and Owner notified in writing. All Offers for this work shall be delivered to Owner, and opened by Owner at a pre-determined location.

11.6 **Protests.** Construction Manager at Risk, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. Construction Manager at Risk shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. Construction Manager at Risk shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. Construction Manager at Risk shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offer or other protester, in connection with any procurement protest or claim.

**ARTICLE 12**

**ACCOUNTING RECORDS**

12.1 **Accounting; Audit Access.** The Construction Manager at Risk shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives shall be afforded reasonable and regular access to the Construction Manager at Risks records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Construction Manager at Risk shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

12.2 **Periodic and Final Audits.** Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The Construction Manager at Risk shall cooperate fully with Owner in the performance of such audits.
ARTICLE 13
PROGRESS PAYMENTS

13.1 Integration with the General Conditions. The requirements of this Article 13 are in addition to, and not in lieu of, the requirements of Article 9 of the General Conditions.

13.2 Progress Payments. Based upon applications for payment submitted pursuant to Article 9 of the General Conditions, Owner shall make progress payments of the Preconstruction Fee, Cost of the Work, Specified General Conditions, and associated Construction Manager at Risk Fee, to the Construction Manager at Risk as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

13.3 Percentage of Completion. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment.

13.4 Calculation of Payment for Preconstruction Services. Payment for Preconstruction Services shall be based upon the Construction Manager at Risk's Preconstruction Work Plan attached to this Agreement as Exhibit B. Payment will be made on a task basis for Preconstruction Services completed by the Construction Manager at Risk and accepted by the Owner.

13.5 Calculation of Payment during the Construction Phase. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(a) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values;

(b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Article 9 of the General Conditions;

(c) Add the Specified General Conditions. The Fixed Cost of Specified General Conditions shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the Construction Phase;

(d) Add the Construction Manager at Risk’s Fee. The portion of the Construction Manager at Risk's Fee payable shall be an amount that bears the same ratio to Construction Manager at Risk Fee as sum of the amounts in subparagraph (a) and (b) above bears to the Cost of the Work in the GMP.

(e) Subtract the aggregate of previous payments made by the Owner;
(f) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;

(g) Subtract any amounts for which the Owner’s Representative has withheld or nullified payment as provided in the Contract Documents; and

ARTICLE 14
TERMINATION OR SUSPENSION

14.1 **Owner's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the Construction Manager at Risk shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of Construction Manager at Risk and its Subcontractors performed to the date of termination, and Construction Manager at Risk shall deliver copies of the same to Owner on request.

14.2 **Owner's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner for convenience pursuant to Article 14.4 of the General Conditions.

The Construction Manager at Risk shall be entitled to payment for the Work executed plus Specified General Conditions prorated to the date of termination, plus the Construction Manager at Risk's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

14.3 **Owner's Termination for Cause.** In the event of termination of this Agreement by Owner for cause pursuant to Article 14.2 of the General Conditions, the amount, if any, to be paid to the Construction Manager at Risk after application of the General Conditions and Owner’s rights at law shall not exceed the amount the Construction Manager at Risk would be entitled to receive under Article 14.2.

14.4 **Construction Manager at Risk Termination for Cause.** If Construction Manager at Risk terminates this Contract for Owner's material breach, the amount to be paid to Construction Manager at Risk shall not exceed the amount Construction Manager at Risk would have been entitled to receive under Article 13 above through the date of termination and demobilization from the Project, with the Construction Manager at Risk Fee prorated based on the actual Cost of the Work through the date of termination.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 **Representations.** Construction Manager at Risk represents and warrants to Owner as of the effective date of this Contract that the Construction Manager at Risk's Project
Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the Construction Manager at Risk to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**ARTICLE 16**
**MISCELLANEOUS**

16.1 **Headings.** The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

16.2 **Merger.** The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. Construction Manager at Risk, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.
**THIS CONTRACT** is executed in three original copies of which one is to be delivered to the Construction Manager at Risk and the remainder to Owner.

**CONSTRUCTION MANAGER AT RISK:**

Name of Firm: ____________________________

Address: _________________________________

Construction Manager at Risk's Federal I.D. No: ____________________

Construction Manager at Risk’s New Mexico Contractor’s License No: __________________

Construction Manager at Risk’s New Mexico Gross Receipts Tax No: ____________________

____________________________________________________________

**Signature of Authorized Representative of CONSTRUCTION MANAGER AT RISK**

Title_________________________________

Date_________________________________

**OWNER:**

_________________________________________

**Signature of Owner’s Authorized Representative**

Title_________________________________

Date_________________________________

**EXHIBITS:**

Exhibit A - Form of GMP Amendment
Attachment 1 – Summary Matrix of Cost Allocation
Exhibit B – Preconstruction Work Plan
EXHIBIT A

GMP AMENDMENT TO THE AGREEMENT BETWEEN THE OWNER AND
CONSTRUCTION MANAGER AT RISK

THIS AMENDMENT IS BETWEEN:

OWNER:

___________________________________

And

CONSTRUCTION MANAGER AT RISK
("the CONSTRUCTION MANAGER AT RISK"):  

The Project is:

Date of Original Agreement:

Date of this Amendment:
The Owner and Construction Manager at Risk hereby amend the Contract as set forth below.

1. **GMP.** The parties agree that the GMP for the Project is $____________, consisting of the Preconstruction Fee, Cost of the Work, Construction Manager at Risk Fee (stated as a fixed dollar lump sum amount), and the SGC Work as follows:

   - **Preconstruction Fee:** $____________
   - **Cost of the Work:** $____________
   - **Construction Manager at Risk Fee**
     - (**% of Cost of the Work):** $____________
   - **Specified General Conditions:** $____________
   - **GMP (Total of above categories):** $____________
   - **PLUS New Mexico Gross Receipts Tax (NMGRT):** $____________
   - **TOTAL:** $____________

*excluding Pre-Construction Fee

For purposes of determining the GMP, the GMP includes the Construction Manager at Risk’s Contingency, the Construction Manager at Risk Field Work, and the costs of all components and systems required for a complete, fully functional facility.

2. **Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (____ pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. Construction Manager at Risk shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

4. **Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall [NOTE-SELECT ONE: remain that stated in the Contract/ Insert if different Substantial Completion Date has been agreed: ________________, 20__].

5. **Self Performance.** The Construction Manager at Risk will perform_____ % of the GMP with its own forces.

**THIS CONTRACT** is executed in three original copies of which one is to be delivered to the CONSTRUCTION MANAGER AT RISK, and the remainder to Owner.
CONSTRUCTION MANAGER AT RISK:

Name of Firm: __________________________

Address: _________________________________

CONSTRUCTION MANAGER AT RISK’s Federal I.D. No: ________________

Construction Manager at Risk’s New Mexico Contractor’s License No: ________________

Construction Manager at Risk’s New Mexico Gross Receipt’s Tax No: ________________

______________________________
Signature of Authorized Representative of CONSTRUCTION MANAGER AT RISK

Title _______________________________

Date _______________________________

OWNER:

______________________________
Signature of Owner’s Authorized Representative

Title _______________________________

Date _______________________________
Attachment A  Plans, Specifications, Supplementary Conditions of the Contract, on which the Guaranteed Maximum Price is based, pages ____ through ___ dated _________________.

Attachment B  Allowance items, pages ____ through ___ dated _________________.

Attachment C  Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages ___ through ____, dated _________________.

Attachment D  Completion schedule, pages _____ through ___, dated _________________.

Attachment E  Alternate prices, pages ___ through ____, dated _________________.

Attachment F  Unit prices, pages ___ through ____, dated _________________.

Attachment G  Combined Subcontractor Listing & Assignment of Anti-Trust Claims Form
REVIEW AND APPROVAL:

This Bond has been executed by a Surety named in the current list of "companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

APPROVED:

Owner's Representative or Governing Authority

Date:
AGENT'S AFFIDAVIT

(To be filled in by Agent)

STATE OF ____________________________

COUNTY OF __________________________

being first duly sworn, deposes and says that he/she is the duly appointed agent for and is licensed in the State of New Mexico.

Deponent further states that a certain bond was given to indemnify the State of New Mexico in connection with the construction of
dated the __________ day of ________, 20__, executed by

Contractor, as principal, and ______________________, as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

Subscribed and sworn to before me, a notary public in and for the County of ____________
this ______ day of _____________________, 20__.

Notary Public

My Commission Expires:

AGENT'S ADDRESS:

Telephone
COMBINED
LIST OF SUBCONTRACTORS
And
ASSIGNMENT OF ANTITRUST CLAIMS
By
CONTRACTOR, SUBCONTRACTORS, SUBSUBCONTRACTORS, and SUPPLIERS

EXAMPLE TRADES AND SUPPLIERS: SITE WORK, CONCRETE, MASONRY, FRAMING, LUMBER, STEEL, STEEL FABRICATION, ROOFING, EXTERIOR INSULATION AND FINISH, DRYWALL, DOORS, GLASS AND GLAZING, PLASTER, PAINTING, CARPET, RESILIENT, CONVEYING SYSTEMS, HVAC, CONTROLS, PLUMBING, SHEET METAL, ELECTRICAL

1. Subcontractor Listing shall be provided before any Early Work or Work pursuant to a GMP Amendment proceeds, and be fully complete with regards to all Subcontractors providing services valued at $5,000.00 or more, or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater pursuant to Section 13-4-34, NMSA 1978.

   a. Subcontractor Listing shall be expanded after Early Work Amendment or GMP Amendment to include major Suppliers and, each entity listed shall be signed by individual empowered to obligate Supplier, Subcontractor, or Sub-subcontractor.

   b. Subcontractor Listing shall also be expanded after Early Work Amendment or GMP Amendment to include the Department of Workforce Solutions Public Works Division labor enforcement fund registration number. See the Department of Workforce Solutions web site at www.dws.state.nm.us under “Public Works” for registration form, listings and information.

2.

PROJECT NAME: NAME OF PROJECT HERE

CMAR MULTI-PHASE SELECTION NUMBER: INSERT NUMBER HERE

The undersigned agrees that any and all claims which the firm may have or may inure to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent that such overcharges are passed on to the Owner. It is agreed that the firm retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the District, including the right to any treble damages attributable thereto.
# Subcontractor Listing

*Signature required at date of Subcontractor Award

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## DOCUMENT: GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK AGREEMENT

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**Summary of Matrix of Cost Allocation - continued**
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* - The cost to the CM at Risk to ensure that these activities are accomplished in accordance with the Contract Documents is a Specified General Conditions Cost. The cost of the items themselves is a Cost of the Work.
EXHIBIT B

PRECONSTRUCTION WORK PLAN

*****Attach Section 00_5419*****

Electronic version of Section 00_5419 form available at http://hobbsschools.net/department/finance/current_bid_schedule/