

Roosevelt Elementary School District, #66

26-CMAR-001

CONSTRUCTION SERVICES FOR IRENE LOPEZ ACADEMY OF THE
ARTS REPLACEMENT

Construction Services for Irene Lopez Academy of the Arts Replacement

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Draft

1. CMAR: Construction Services Recitals

Roosevelt Elementary School District, #66

CM@R Services for Irene Lopez Academy of the Arts Replacement

at Irene Lopez Academy of the Arts

Construction Manager at Risk

Construction Services Contract

Design Project # 26-001 Contract # 26-CMAR-001

1.1. Agreeing Parties

THIS AGREEMENT, made and entered by and between Roosevelt Elementary School District, #66, an Arizona School District, hereinafter designated the "District" and To Be Determined General Contractor, Corporation, the general contractor, hereinafter designated the "Construction Manager at Risk" or "CM@R."

1.2. Recitals

- A. The Superintendent of Roosevelt Elementary School District, #66 is authorized and empowered by action of the District Governing Board, hereinafter "Board," in open public meeting, to execute this contract for professional services and related construction services.
- B. The District intends to construct the CM@R Services for Irene Lopez Academy of the Arts Replacement at Irene Lopez Academy of the Arts hereinafter referred to as the "Project," as more fully described in Exhibit A , [#Exhibit A Project Description](#) attached. The full street or physical address of the Project is: 4610 S. 12th Street, Phoenix, AZ 85040. The full street or physical address of the Project shall be included in each subcontract of CM@R and/or each subcontractor at any level.
- C. To undertake the construction administration of said project the District has entered into a contract with Grace Design Studio ("Architects") hereinafter referred to as the "Design Professional."
- D. The CM@R has represented to the District the ability to provide construction management services and to construct the Project and based on this representation the District engages the CM@R to provide these services and construct the Project.
- E. An Agreement has been executed previously between District and CM@R to perform design phase services relative to this Project. That Agreement and the services identified therein shall continue during the duration of this contract.

2. Article 1 Definitions

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the District and the CM@R as follows:

2.1. Definitions

- A. "Agreement ("Contract", This written document signed by the District and CM@R covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.
- B. "Change Directive" A written order prepared and signed by District, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.
- C. "Change Order" A type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by District, CM@R and other parties as may be required or appropriate, agreeing to changes to a GMP. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.
- D. "Construction Documents" The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.
- E. "Construction Fee" The CM@R's administrative costs, home office overhead, and profit as applicable to this project whether at the CM@R's principal or branch offices.
- F. "CM@R" The firm selected by the District to provide construction services as detailed in this Agreement.
- G. "CM@R's Contingency" A fund to cover cost growth during the project used at the discretion of the CM@R usually for costs that result from project circumstances. The amount of the CM@R's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@R's Contingency is described in Article 6.1.2.3.
- H. "CM@R's Representative" The person designated in Article 2.4.2.
- I. "Contract Documents" The following items and documents in descending order of precedence executed by the District and the CM@R: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications; (v) the CM@R Design Phase Services Agreement; (vi) Request for Qualifications No. 26-CMAR-001 issued by the District relative to the Project.
- J. "Contract Price" The amount or amounts set forth in Article 5.
- K. "Contract Time" The Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

- L. "Cost of the Work" The direct costs necessarily incurred by the CM@R in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@R's Construction Fee, General Conditions Costs, and taxes.
- M. "Critical Path" The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will delay achieving Substantial Completion.
- N. "Day(s)" Calendar day(s) unless otherwise specifically noted in the Contract Documents.
- O. "Design Phase Contract" The agreement between the District and CM@R for the Services provided by the CM@R during the design phase and as may be subsequently needed which may include, but is not limited to, the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, MBE/WBE/SBE utilization, subcontractor bid phase services and GMP preparation and other services set forth in the agreement or reasonably inferable therefrom.
- P. "Design Professional" The qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.
- Q. "Differing Site Conditions" Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.
- R. "District ("Owner" or "OWNER") The District, an Arizona School District, with whom CM@R has entered into this Contract and for whom the services are to be provided pursuant to said Contract.
- S. "District's Representative" The person designated in Article 3.42.
- T. "Final Acceptance/Completion" Means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities. See Article 5.3.
- U. "Float" The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.
- V. "General Conditions Costs" includes, but is not limited to the following types of costs for the CM@R during the construction phase: (i) payroll costs for project manager or CM@R for managerial work conducted at the site, (ii) payroll costs for the superintendent and full-time

general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CM@R or Subcontractors.

- W. “Guaranteed Maximum Price” or “GMP” The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@R’s Contingency.
- X. “GMP No. 1” means the first GMP.
- Y. “GMP Plans and Specifications” The plans and specifications upon which the Guaranteed Maximum Price proposal is based.
- Z. “Legal Requirements” All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- AA. “Notice to Proceed” or “NTP” The directive issued by the District, authorizing the CM@R to start Work.
- BB. “Owner’s Contingency” A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s contingency will be set solely by the Owner and will be in addition to the project costs included in the CM@R’s GMP packages. Use and management of the Owner’s contingency is described in Article 6.1.C.
- CC. “Performance Period” The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.
- DD. “Payment Request” Requests by the CM@R for progress or final payments for Work which must be submitted in accordance with Article 7 on District approved forms with supporting documentation as required by the Contract Documents and/or District.
- EE. “Product Data” Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@R to illustrate materials or equipment for some portion of the Work.
- FF. “Project” The Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit A attached.
- GG. “Project Record Documents” The documents created pursuant to Article 3.11.

- HH. "Samples" Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.
- II. "Shop Drawings" Drawings, diagrams, schedules and other data specially prepared for the Work by the CM@R or a Subcontractor, Sub subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- JJ. "Site" The land or premises on which the Project is located.
- KK. "Specifications" The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- LL. "Subcontractor" An individual or firm having a direct contract with the CM@R or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the construction phase Work for which the CM@R is responsible.
- MM. "Substantial Completion" When the Work, or an agreed upon portion of the Work, is sufficiently complete so that District can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by District Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the District or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the District; (vi) draft O&M manuals and record documents reviewed and accepted by the District; (vii) District operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work completed; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to Article 3.5C.
- NN. "Supplier" A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@R or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@R or any Subcontractor.
- OO. "Work" The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

3. Article 2 CM@R Services and Responsibilities

The CM@R shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the District. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@R in Arizona, in the city, town or county where the Work is to be constructed. The Work shall be to the satisfaction of the District and strictly pursuant to and in conformity with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

3.1. Subcontractor and Major Suppliers

Subcontractor and Major Supplier selections shall be made in conformance with Article 3.8 of the Parties' related Design Phase Services contract which is adopted by reference as if wholly rewritten herein and A.R.S § 41-2578 as amended. The CM@R shall obtain a minimum of three bids for all areas of construction, unless otherwise approved by the District representative in writing

3.2. CM@R's Representative

CM@R's Representative shall be reasonably available to District and shall have the necessary expertise and experience required to supervise the Work. CM@R's Representative shall communicate regularly with District but not less than once a week and shall be vested with the authority to act on behalf of CM@R. CM@R's Representative may be replaced only with the written consent of District.

3.3. Contractors Outreach

The CM@R shall make best efforts to use MBE, WBE, SBE and/or LOCAL contractors and suppliers.

3.4. Government Approvals and Permits

- A. Unless otherwise provided, CM@R shall obtain or assist the District to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The CM@R is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.
- B. Copies of these permits and notices must be provided to the District's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the District's Representative. This provision does not constitute an assumption by the District of an obligation of any kind for violation of said permit or notice requirements.
- C. District shall be responsible for permit(s) and fees for building and demolition permits. District will also pay review fees for grading and drainage, water, sewer, and landscaping. District shall also pay for utility design fees for permanent services.
- D. CM@R shall be responsible for all other permits and review fees not specifically.

- E. CM@R is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@R's responsibility.

3.5. Pre-construction Conference

- A. Prior to the commencement of any Work, the District's Representative will schedule a Pre-construction conference.
- B. The purpose of this conference is to establish a working relationship between the CM@R, utility firms, various District agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required and emergency telephone numbers for all representatives involved in the course of construction.
- C. The Notice to Proceed date will be concurred to by the parties or set by the District. At or after the meeting and upon receipt of a signed contract and delivery of the required bonds and insurance in a District approved format or at such other time as the District may elect, a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed and/or as set forth in Article 1 herein. Failure by the CM@R to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.
- D. Intentionally left blank.
- E. The CM@R shall provide a schedule of values based on the categories used in the buy out of the Work but not greater than the approved GMP and which shall identify the CM@R's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.
- F. Minimum attendance at the Preconstruction conference held by the CM@R shall be the CM@R's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, the CM@R's safety officer and the District.

3.6. Control of the Work

- A. Unless otherwise provided in the Contract Documents to be the responsibility of District or a separate contractor, CM@R shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@R to complete the Work consistent with the Contract Documents.

- B. CM@R shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@R shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- C. CM@R or the CM@R's Superintendent shall be present at the Site at all times that construction activities are taking place.
- D. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- E. In the event of noncompliance with this Division, the District may require the CM@R to stop or suspend the Work in whole or in part.
- F. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@R's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
- G. Before ordering materials or doing work, the CM@R and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the District for resolution before proceeding with the work.
- H. The CM@R shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@R with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the District immediately.
- I. The CM@R shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.
- J. Any person employed by the CM@R or any Subcontractor who, in the opinion of the District, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the educational setting of the worksite, shall, at the written request of the District, be removed from the Work by CM@R or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the District. The CM@R or Subcontractor shall keep the District harmless from damages or claims which may occur in the enforcement of this Section.
- K. CM@R assumes responsibility to District for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship

between District and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

- L. CM@R shall coordinate the activities of all Subcontractors. If District performs other work on the Project or at the Site with separate contractors under District's control, CM@R agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

3.7. Control of the Work Site

- A. Throughout all phases of construction, including suspension of Work, CM@R shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@R to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@R shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit District to occupy the Project or a portion of the Project for its intended use.
- B. CM@R shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the District and in accordance with the requirements of any applicable Rules and Regulations or such other specifications as the parties may agree in writing.
- C. CM@R shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@R shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- D. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@R. When equipment is no longer required for the Work, it shall be removed promptly from the Site.
- E. Protection of the Work, the construction site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@R.

3.8. Shop Drawings, Product Data and Samples

- A. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@R proposes to conform to the information given and the design concept expressed in the Contract Documents.

- B. The CM@R shall review, approve, verify, and submit to the District five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B [#Exhibit B Approved GMP Proposal](#) as to cause no delay in the Work or in the activities of the District or of separate contractors. Submittals made by the CM@R, which are not required by the Contract Documents, may be returned without action.
- C. The CM@R shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the District. Such Work shall be in accordance with approved submittals.
- D. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@R represents that the CM@R has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- E. The CM@R shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the District's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@R has specifically informed the District in writing of such deviation at the time of submittal and the District has given written approval to the specific deviation. The CM@R shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the District's approval thereof.
- F. The CM@R shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the District on previous submittals.
- G. Informational submittals upon which the District is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.9. [Quality Control, Testing and Inspection](#)

- A. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- B. All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the District. Any material rejected by the District shall be removed immediately and replaced in an acceptable manner.

- C. The procedures and methods used to sample and test material will be determined by the District. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.
- D. The District will select a pre-qualified Independent Testing Laboratory and will pay for initial District Acceptance Testing.
 - 1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the CM@R. CM@R's Contingency cannot be utilized for the cost of re-testing.
 - 2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- E. The CM@R will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- F. At the option of the District, materials may be approved at the source of supply before delivery is started.
- G. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@R, unless otherwise provided in the Contract Documents.
- H. CM@R's convenience and quality control testing and inspections shall be the sole responsibility of the CM@R and paid by the CM@R.

3.10. Trade Names and Substitutions

- A. Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, may be permitted, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:
- B. The substitution shall be submitted by CM@R in writing to the District.
- C. The CM@R shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- D. The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- E. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

- F. The CM@R if requested by the District shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- G. The District will make the final decision and will notify the CM@R in writing as to whether the substitution has been accepted or rejected.
- H. If the District does not respond in a timely manner, the CM@R shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

3.11. Project Record Documents

- A. During the construction period, the CM@R shall maintain at the jobsite a set of redline, blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes. CM@R contractor will certify that these documents are up to date when they submit their monthly pay application. The CM@R shall also:
 - B. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
 - 1. Dimensional changes to the drawings.
 - 2. Revisions to details shown on Drawings
 - 3. Depths of foundations below first floor
 - 4. Locations and depths of underground utilities
 - 5. Revisions to routing of piping and conduits.
 - 6. Revisions to electrical circuitry.
 - 7. Actual equipment locations.
 - 8. Duct size and routing.
 - 9. Locations of concealed internal utilities.
 - 10. Changes made by Change Order, Change Order Directive,
 - 11. Field Order, Record of Field Change, ASI's and RFI's.
 - 12. Details not on original Contract Drawings.
 - 13. Similar deviations, variations and modifications.
 - C. Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

- D. Mark Project Record Drawings sets with red erasable colored pencil.
- E. Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- F. As a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the District Representative for review and comment.
- G. Upon receipt of the reviewed Project Record Drawings from the District, the CM@R shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the District within 14 Days:
- H. A complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with District CADD technology. The Design Professional will provide files of the original Construction Documents to the CM@R for the use of preparing these final Project Record Drawings or the CM@R may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."
- I. A complete set of reproducible mylars from the final AutoCAD drawings.
- J. A complete set of the final "as-builts" in electronic format to the District.
- K. The original copy of the Project Record Drawings (redline mark-ups).

3.12. Project Safety

- A. CM@R recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to
 - 1. all individuals at the Site, whether working or visiting,
 - 2. the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and
 - 3. all other property at the Site or adjacent thereto.
- B. CM@R assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- C. CM@R shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@R's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- D. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@R's personnel, Subcontractors and others as applicable. CM@R shall

provide the District copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

- E. CM@R and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any District-specific safety requirements set forth in the Contract Documents, provided that such District-specific requirements do not violate any applicable Legal Requirement.
- F. CM@R will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to District's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- G. CM@R's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

3.13. Warranty

- A. CM@R warrants to District that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- B. CM@R's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@R or anyone for whose acts CM@R may be responsible and/or liable.
- C. CM@R's warranty obligation shall be for two years, except for such greater period as may be required by the technical specifications.
- D. Roofs shall have a twenty-year, No Dollar Limit Warranty.
- E. Exterior Coatings shall have a ten year, No Dollar Limit Warranty.
- F. HVAC Warranty is minimum of 5 years on the compressors.
- G. Nothing in this warranty is intended to limit any manufacturer's warranty which provides District with greater warranty rights than set forth in this Section or the Contract Documents. CM@R will provide District with all manufacturers' warranties upon Substantial Completion.
- H. Nothing in this warranty is intended to limit any other remedy at law that may be available to the District.

3.14. Correction of Defective Work

- A. CM@R agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.13 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the District, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- B. During the Work, CM@R shall take meaningful steps to commence correction of such nonconforming Work as notified by the District. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps during the Work, District, in addition to any other remedies provided under the Contract Documents, may provide CM@R with written notice that District will commence correction of such nonconforming Work with its own forces.
- C. CM@R shall, take meaningful steps to commence correction of nonconforming Work subject to #13 above, within seven days of receipt of written notice from District. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps within such seven day period, District, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide CM@R with written notice that District will commence correction of such nonconforming Work with its own forces.
- D. If District does perform such corrective Work, CM@R shall be responsible for all reasonable costs incurred by District in performing such correction.
- E. In the event nonconforming Work creates an emergency requiring an immediate response, the CM@R will respond and initiate corrections within twenty-four hours.
- F. The two year period referenced above applies only to CM@R's obligation to correct nonconforming Work as provided in this section and is not intended to constitute a period of limitations for any other rights or remedies District may have regarding CM@R's obligations under the Contract Documents or as may be allowed by law.

4. Article 3 District Services and Responsibilities

4.1. Duty to Cooperate

- A. District shall, throughout the performance of the Work, cooperate with CM@R and perform its responsibilities, obligations and services in a timely manner to facilitate CM@R's timely and efficient performance of the Work and so as not to delay or interfere with CM@R's performance of its obligations under the Contract Documents.
- B. District shall furnish at the CM@R's request, if available, at no cost to the CM@R, a CADD file of the Construction Documents in AutoCAD format compatible with District Engineering and Architectural Services Department CADD technology.

4.2. District's Representative

- A. District's Representative or designee shall be responsible for providing District-supplied information and approvals in a timely manner to permit CM@R to fulfill its obligations under the Contract Documents.
- B. District's Representative or designee shall also provide CM@R with prompt notice if it observes any failure on the part of CM@R to fulfill its contractual obligations, including any noted default or defect in the project or non-conformance with the drawings and specifications.
- C. The District may utilize field inspectors to assist the District's Representative during construction in observing performance of the CM@R.
- D. The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- E. The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CM@R.
- F. The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the District's Representative.
- G. The furnishing of such services for the District shall not make the District responsible for or give the District control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for the CM@R's failure to perform the work in accordance with Contract Documents.

4.3. District's Separate Contractors

District is responsible for all work performed on the Project or at the Site by separate contractors under District's control. District shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@R in order to enable CM@R to timely complete the Work consistent with the Contract Documents.

4.4. [Permit Review and Inspections](#)

If requested by the CM@R, the District's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

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5. Article 4 Contract Time

5.1. Contract Time

- A. Contract Time shall start with the Notice to Proceed for GMP No. 1, include a date for Substantial Completion and end with Final Acceptance/Completion.
- B. Each GMP will establish a separate NTP date, Substantial Completion date, Performance Period and Contract Time for that GMP. The Substantial Completion dates and/or Performance Periods may be sequential or may run concurrently. The Performance Period for GMP No. 1 shall be ----- Days starting with the NTP.
- C. CM@R agrees that it will commence performance of the Work and achieve Substantial Completion, Final Acceptance/Completion, the Performance Periods and Contract Time on or before the dates set.
- D. All of the times set forth in this Article 4 shall be subject to adjustment in accordance Article 6.
- E. Time is of the essence, for times and related matters set forth in Article 4 and the rest of this agreement.

5.2. Substantial Completion

- A. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.
- B. Prior to notifying the District of substantial completion, the CM@R shall inspect the Work and prepare and submit to the District a comprehensive list of items to be completed or corrected. The CM@R shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@R to complete all Work in accordance with the Contract Documents.
- C. CM@R shall notify District when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- D. Within five (5) days of District's receipt of CM@R's notice, District and CM@R will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- E. If such Work is substantially complete, District shall prepare and issue a Certificate of Substantial Completion that will set forth
 - 1. the date of Substantial Completion of the Work or portion thereof,

2. the remaining items of Work that have to be completed within thirty (30) calendar days of the Substantial Completion date and before Final Acceptance/Completion,
 3. provisions (to the extent not already provided in the Contract Documents) establishing District's and CM@R's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance/Completion,
 4. an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion, and
 5. the date for Final Acceptance/Completion.
- F. District, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that
1. a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 5.2 above,
 2. CM@R and District have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
 3. District and CM@R agree that District's use or occupancy will not interfere with CM@R's completion of the remaining Work.

5.3. Final Acceptance/Completion

Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, District and CM@R will jointly inspect to verify that the remaining items of Work have been completed as set forth in Article 5.1.B. Upon the District's determination that Final Completion has been achieved, the District will issue a Final Acceptance/Completion Letter and payment pursuant to Article 8.4.

5.4. Liquidated Damages

- A. CM@R understands that if Substantial Completion is not attained within the Contract Time as adjusted, District will suffer damages which are difficult to determine and accurately specify. CM@R agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@R shall pay the District (\$1,500.00) as liquidated damages for each calendar Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.
- B. CM@R understands that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, District will suffer damages which are difficult to determine and accurately specify. CM@R agrees that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, CM@R shall pay the District (\$1,000.00) as liquidated damages for each

calendar Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

5.5. Incentive Bonuses

There are no incentive bonuses for this project unless otherwise agreed in writing by the parties.

5.6. Project Schedule

- A. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.
- B. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@R of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.
- C. An updated Project Schedule shall be submitted monthly to the District as part of the Payment Request.
 1. CM@R shall provide District with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.
 2. With each schedule submittal the CM@R shall include a transmittal letter including the following:
 - a. Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
 - b. Current and anticipated delays including:
 - i. Cause of the delay,
 - ii. Corrective action and schedule adjustments to correct the delay,
 - iii. Known or potential impact of the delay on other activities, milestones, and by the date of Substantial Completion.
 3. Changes in construction sequence
 4. Pending items and status thereof including but not limited to:
 - a. Time Extension requests
 - b. Other items

5. Substantial Completion date status:
 - a. If ahead of schedule, the number of calendar days ahead.
 - b. If behind schedule, the number of calendar days behind.
 6. Other project or scheduling concerns
- D. District's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@R from compliance with the requirements of the Contract Documents or be construed as relieving the CM@R of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- E. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- F. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- G. The CPM diagram schedule shall indicate all relationships between activities.
- H. The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- I. The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.
- J. The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- K. The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@R activities.
- L. The schedule shall include a critical path activity that reflects anticipated rain and weather delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the District.
- M. The Project Schedule shall consider the District's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- N. Float time shall be as prescribed below;

1. The total Float within the overall schedule, is not for the exclusive use of either the District or the CM@R, but is jointly owned by both and is a resource available to and shared by The CM@R shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be considered or granted nor delay damages considered or paid until a delay occurs which extends the Work beyond the Substantial Completion date.
2. Since Float time within the schedule is jointly owned, it is acknowledged that District-caused delays on the Project may be offset by District-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@R, etc.). In such an event, the CM@R shall not be entitled to have considered or receive a time extension or delay damages until all District-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

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6. Article 5 Contract Price

The CM@R agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved Guaranteed Maximum Price.

6.1. Contract Price

- A. The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of \$----- for Owner's Contingency.
- B. Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@R is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@R's Contingency shall revert to the District.
 1. The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
 2. The General Conditions Costs and the Construction Fee are firm fixed lump sums.
 3. CM@R's Contingency is an amount the CM@R may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the District for increases in General Condition Costs. CM@R's Contingency is assumed to be a direct project cost and, therefore, shall and shall be assumed to have received all markups at the time of GMP submission.
 - a. When the CM@R utilizes CM@R's Contingency funds, the CM@R shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@R shall deduct the amount of CM@R's Contingency funds used from the CM@R's Contingency line item and add the same amount to the line item on the schedule of values where the funds were used. If the CM@R's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
 4. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and is a not-to-exceed reimbursable amount.
- C. Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@R, the sum of which will be

the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@R at the time that Owner's Contingency is used.

- D. The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
 - 1. GMP amendments are accumulative except for contingency. The amount of contingency for each GMP amendment will be negotiated separately.
 - 2. If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.
- E. The CM@R shall submit to the District, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this section shall be included in all contracts between the CM@R and its Subcontractors and Consultants. The District may exercise its rights under this section as often as reasonably necessary in the District's sole judgment to assure the District has a complete and accurate understanding of all Project costs.

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7. Article 6 Changes to the Contract Price & Time

7.1. Delays to the Work

- A. If CM@R is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@R is responsible, the Contract Times for performance may be reasonably extended by Change Order.
- B. The CM@R shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
- C. By way of example, events that may entitle CM@R to an extension of the Contract Time include acts or omissions of District or anyone under District's sole control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- D. If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an actual, adverse effect on the scheduled Substantial Completion.
- E. It is understood, however, that permitting the CM@R to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the District of any of its legal rights herein.
- F. In addition to CM@R's right to request a time extension for those events set forth in this Section, CM@R may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@R and District, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

7.2. Differing Site Conditions

- A. If CM@R encounters a Differing Site Condition, CM@R may be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@R's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- B. Upon encountering a Differing Site Condition, CM@R shall provide prompt written notice to District of such condition, which notice shall not be later than five (5) days after such condition

has been encountered. CM@R shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

7.3. Errors, Discrepancies and Omissions.

- A. If the CM@R observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.
- B. If the CM@R proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the CM@R prior to clarification by the Design Professional shall be at the CM@R's risk.

7.4. District Requested Change in Work

- A. The District reserves the right to make, at any time during the progress of the Work, such alterations to the Work as may be found necessary or in the District's best interest.
- B. Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@R agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.
- C. The District will request a proposal for a change in Work from CM@R, and any adjustment in the Contract Price and/or Contract Times shall be made based on a mutually agreed upon cost and time.

7.5. Legal Requirements

The Contract Price and/or Contract Times shall be adjusted to compensate CM@R for the effects of any changes in the Legal Requirements enacted after the date of the acceptance of the GMP, affecting the performance of the Work

7.6. Change Directives and Change Orders

- A. District and CM@R shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.
- B. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

7.7. Minor Changes in the Work

- A. The District has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the District and CM@R. The CM@R shall carry out such written orders promptly.

- B. CM@R may make minor changes in Work, provided, however that CM@R shall promptly inform District, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@R.
- C. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times

7.8. Contract Price Adjustments

- A. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
 - 1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
 - 2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by District; and
 - 3. Costs, fees and any other markups.
- B. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit B.
- C. If an increase or decrease cannot be agreed to as set forth in items 7.8 and District issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@R shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- D. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to District or CM@R because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- E. If District and CM@R disagree upon whether CM@R is entitled to be paid for any services required by District, or if there are any other disagreements over the scope of Work or proposed changes to the Work, District and CM@R shall resolve the disagreement pursuant to Article 8 hereof.
 - 1. As part of the negotiation process, CM@R shall furnish District with a good faith estimate of the costs to perform the disputed services in accordance with District's interpretations.
 - 2. If the parties are unable to agree and District expects the CM@R to perform the services in accordance with District's interpretations, CM@R shall proceed to perform the disputed services, conditioned upon District issuing a written order to CM@R (i) directing CM@R to proceed and (ii) specifying District's interpretation of the services that are to be performed.

7.9. Emergencies

In any emergency affecting the safety of persons and/or property, CM@R shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

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8. Article 7 Procedure for Payment

For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the District and to its satisfaction, the District agrees to pay the said CM@R the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CM@R's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below and in compliance with A.A.C. R7-2-1114 through 1115.

8.1. GMP Payment Request

- A. At the pre-construction conference prescribed in Article 3.5, CM@R shall submit for District's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@R throughout the Work.
- B. At least five (5) working days prior to the date established for a Payment Request, the CM@R shall submit an updated Project Schedule and meet with the District's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- C. The Payment Request shall constitute CM@R's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to District free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- D. The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.
 1. For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and District shall receive the equipment and materials free and clear of all liens and encumbrances.
 2. For materials and equipment stored off the Site, the District must approve the storage. The material and equipment must be stored within the County where the Work is to be constructed or as the District may otherwise approve in writing and be accessible for District's inspection. The CM@R must protect the District's interest and shall be responsible for insurance, bonding, storage and transportation to the Site.
 3. All bonds and insurance required for stored materials shall name Roosevelt Elementary School District, #66 as the loss payee to the extent of its interest in the stored materials.
- E. CM@R shall submit its payment request to District on the monthly anniversary of the construction Notice To Proceed beginning with the first month after the construction Notice To Proceed.

8.2. Payment of GMP

- A. District shall make payment in accordance with A.A.C. R7-2-1114 – 1116. Payment will be made as set forth in the referenced provisions but in each case, less the total of payments previously made, and less amounts properly retained under Article 8.3 below or as otherwise allowed by Arizona law.
- B. District shall pay CM@R all amounts properly due. If District determines that CM@R is not entitled to all or part of a Payment Request, it will notify CM@R in writing within (7) days after the date Payment Request is received by the District. The notice shall indicate the specific amounts District intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@R must take to rectify District's concerns. CM@R and District will attempt to resolve District's concerns. If the parties cannot resolve such concerns, CM@R may pursue its rights under the Contract Documents, including those under Article 8 hereof.

8.3. Retention on GMP

- A. All retention shall be retained and paid out pursuant to A.A.C. R7-2-1114 and other applicable Arizona law. Where the provisions of this agreement conflict with the above referenced law, the law shall control. District will retain ten percent (10%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM@R, upon request of the CM@R, and providing CM@R is making satisfactory progress on the Project, District may pay CM@R one-half (1/2) the amount retained to that point and reduce the amount subsequently retained to five percent (5%) from CM@R's subsequent Payment Requests. If, at any time the District determines satisfactory progress is not being made, the 10% retention shall be reinstated for all progress payments made under this agreement subsequent to the determination.
- B. In lieu of retention, the CM@R may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.
 - 1. CDs assigned to the District must be maintained at the District's servicing bank in the form of time deposit receipt accounts.
 - 2. Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the District.
 - 3. CDs and Securities shall be assigned exclusively for the benefit of the District pursuant to an appropriate Escrow Agreement.

4. All substitute securities must be accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the District or the CM@R in relationship to the security assigned.
- C. District shall pay or substitute security shall be returned to CM@R within 60 days after Final Completion and acceptance of work under the Contract unless the District's Governing Board provides a specific written finding of reasons justifying the delay and payment of retention. However, the District may not retain any monies after 60 days which are in excess of the amount necessary to pay the expenses the Governing Board reasonably expects to incur in order to pay or discharge the expenses determined in the finding justifying the retention of monies.

8.4. Final Payment

- A. After receipt of a final Payment Request and in compliance with A.A.C. R7-2-1114, District shall make final payment 60 days after the receipt by the District, provided that CM@R has completed all of the Work in conformance with the Contract Documents, a Final Acceptance/Completion Letter has been issued by the District, and the CM@R has provided the information and documents noted in 8.4.B.
- B. At the time of submission of its final Payment Request, CM@R shall provide the following information:
 1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect District's interests;
 2. A general release executed by CM@R waiving, upon receipt of final payment by CM@R, all claims, except those claims previously made in writing to District and remaining unsettled at the time of final payment; and
 3. Consent of CM@R's surety, if any, to final payment.

8.5. Payments To Subcontractors or Supplier

- A. CM@R shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the District and as required by Arizona law. The CM@R shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the District with each progress payment. In addition, any reduction of retention by the District to the CM@R shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@R shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the CM@R. No Contract between CM@R and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

- B. If the CM@R fails to make payments in accordance with these provisions, the District may take any one or more of the following actions and CM@R agrees that the District may take such actions:
 - 1. Hold the CM@R in default under this Agreement;
 - 2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
 - 3. Reject all future offers to perform work for the District from the CM@R for a period not to exceed one year from Substantial Completion date of this Project; and/or
 - 4. Terminate this agreement.
- C. Should the District fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- D. CM@R shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

8.6. Record Keeping and Finance Controls

- A. Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and CM@R shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance/Completion of the Project.
- B. The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.
- C. The District reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data.
- D. The CM@R shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the District, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- E. The District reserves the right to decrease Contract Price and/or payments made under this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

9. Article 8 Claims and Disputes

9.1. Requests for Contract Adjustments and Relief

- A. If either CM@R or District believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.
- B. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- C. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- D. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

9.2. Dispute Avoidance and Resolution

- A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@R and District each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- B. CM@R and District will first attempt to resolve disputes or disagreements at the field level through discussions between CM@R's Representative and District's Representative, or their designee(s).
- C. If a dispute or disagreement cannot be resolved through field level discussions, CM@R's Representative and District's Representative, upon the request of either party, shall meet in a separately scheduled formal meeting, as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the Representatives so agree other persons or parties may participate in this meeting.
- D. For any disputes not resolved pursuant to the foregoing provisions, the following procedures shall apply:
 - 1. In signing this Agreement, CM@R agrees that any cause CM@R may have against the District and its Governing Board arising in relation to this Procurement, Project and Agreement, including but not limited to, contract claims and controversies, including claims

related to assignees of the CM@R, shall be resolved exclusively through the procedures of the Arizona Education Procurement Code, A.A.C. R7-2-1001, et seq. and A.A.C. R7-2-1101, et seq., including but not limited to, A.A.C. R7-2-1141 through 1159 and R7-2-1181 through 1185.

2. Should this procedure be found to be void or otherwise barred by law, the provision set forth in A.A.C. R7-2-1155 through R7-2-1157 shall be required and shall be a condition precedent for the further prosecution of any such claim.
3. The parties agree that the Design or other Construction Professionals and their consultants, Subcontractor, Suppliers or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

9.3. Representatives of the Parties

District's Representative Roosevelt Elementary School District, #66 designates the individual listed below or his designee as its Representative ("District's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 9.2:

Dr. Dani Portillo, Superintendent

Roosevelt Elementary School District, #66

Address: 6000 S. 7th Street, Phoenix, AZ 85042

Phone: (602) 243-4800

Email: danelia.portillo@rsd66.org

CM@R's Representative CM@R designates the individual listed below as its Representative ("CM@R's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 9.2:

To Be Determined General Contractor Construction

Address: TBD GC

Phone: TBD GC

Email: TBD GC

9.4. CM@R's Representative

CM@R designates the individual listed below as its Representative ("CM@R's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 9.2:

To Be Determined General ContractorConstruction

Address: TBD GC

Phone: TBD GC

Email: TBD GC

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10. Article 9 Suspension and Termination

District's Right to Stop Work

- A. District may, at its discretion and without cause, order CM@R in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- B. CM@R may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by District.

10.1. Termination for Convenience

- A. Upon receipt of written notice to CM@R, District may, at its discretion and without cause, elect to terminate this Agreement. In such event, District shall pay CM@R only the direct value of its completed Work and materials supplied as of the date of termination. CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- B. If the District suspends the Work for 181 consecutive days or more, such suspension shall be deemed a termination for convenience.
 - 1. Upon such termination, the CM@R shall proceed with the following obligations.
 - 2. Stop Work as specified in the notice.
 - 3. Place no further subcontracts or orders.
 - 4. Terminate all subcontracts to the extent they relate to the work terminated.
- C. Assign to the District all right, title and interest of the CM@R under the subcontracts terminated, in which case the District shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- D. Take any action that may be necessary for the protection and preservation of the property related to the contract that is in the possession of the CM@R and which the District has or may acquire an interest.
- E. The CM@R shall submit complete termination inventory schedules no later than 90 days from the date of the notice of termination.
- F. The District shall pay CM@R the following.
 - 1. The direct value of its completed Work and materials supplied as of the date of termination.
 - 2. The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit,

anticipated overhead, or costs arising from CM@R's failure to perform as required under this contract.

3. CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the CM@R would have sustained a loss on the entire Work had the CM@R completed the Work, the CM@R shall not be allowed profit and the District shall reduce the settlement to reflect the indicated rate of loss.
- G. The CM@R shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 8.6.

10.2. District's Right to Perform and Terminate for Cause

- A. If the District provides the CM@R with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@R fails to comply in a time frame specified, the District may have work accomplished by other sources at the CM@R's expense.
- B. If CM@R persistently fails to:
 1. provide a sufficient number of skilled workers,
 2. supply the materials required by the Contract Documents,
 3. comply with applicable Legal Requirements,
 4. timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, and in compliance with all other contract terms, conditions and specifications, or
 5. perform material obligations under the Contract Documents, then District, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Article 9.2.C and 9.2.D below.
- C. Upon the occurrence of an event set forth in Article 9.2.B above, District may provide written notice to CM@R that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@R's receipt of such notice.
- D. If CM@R fails to cure, or reasonably commence to cure, such problem, then District may give a second written notice to CM@R of its intent to terminate within an additional seven (7) day period.
- E. If CM@R, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then District may declare the Agreement terminated for default by providing written notice to CM@R of such declaration.

- F. Upon declaring the Agreement terminated pursuant to Article 9.2.C.2 above, District may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@R hereby transfers, assigns and sets over to District for such purpose, including the assignment of subcontracts pursuant to Article 12.7, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- G. In the event of such termination, CM@R shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@R will only be entitled to be paid for Work performed and accepted by the District prior to its default minus amounts described in Paragraph 10.2.F.
- H. If District's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@R shall be obligated to pay the difference to District. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by District in connection with the re-procurement and defense of claims arising from CM@R's default.
- I. If District improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 10.2.

11. Article 10 Insurance and Bonds

Insurance Requirements

- A. CM@R and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the CM@R, his agents, representatives, employees or Subcontractors.
- B. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement or amounts District may recover.
- C. The District in no way warrants that the minimum limits contained herein are sufficient to protect the CM@R from liabilities that might arise out of the performance of the work under this Agreement by the CM@R, his agents, representatives, employees, or subcontractors. CM@R is free to purchase such additional insurance as may be determined necessary.

11.1. Minimum Scope And Limits Of Insurance

CM@R shall provide coverage with limits of liability not less than those stated below.

11.2. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, direct operations, sublet work, completed operations, sexual predator coverage, broad form.

- General Aggregate/for this Project \$2,000,000/\$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$2,000,000
- Each Occurrence \$2,000,000
- Maximum Deductible \$2,000

The policy shall be endorsed to include the following additional insured language: "Roosevelt Elementary School District, #66 shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R".

11.3. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$2,000,000

The policy shall be endorsed to include the following additional insured language: "Roosevelt Elementary School District, #66 shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R, including automobiles owned, leased, hired or borrowed by the CM@R".

11.4. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease - Each Employee \$100,000

Disease – Policy Limit \$500,000

The policy shall contain a waiver of subrogation against Roosevelt Elementary School District, #66.

11.5. Builders' Risk Insurance or Installation Floater

- A. In an amount equal to the initial Agreement Amount plus additional coverage equal to Agreement Amount for all subsequent change orders.
- B. The District, the CM@R, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the work shall be Named Insureds on the policy.
- C. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement.
- D. Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the District, has an insurable interest in the property required to be covered.
- E. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the District.
- F. Policy must provide coverage from the time any covered property becomes the responsibility of the CM@R, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- G. Policy shall contain a waiver of subrogation against the District.
- H. CM@R is responsible for the payment of all policy deductibles.

11.6. Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

- A. On insurance policies where the District is named as an additional insured, the District shall be an additional insured to the full limits of liability purchased by the CM@R even if those limits of liability are in excess of those required by this Agreement.
- B. The CM@R's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. Coverage provided by the CM@R shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

11.7. Notice Of Cancellation

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the District. Such notice shall be sent directly to the District Representative and shall be sent by certified mail, return receipt requested.

11.8. Acceptability Of Insurers

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@R from potential insurer insolvency.

11.9. Verification Of Coverage

- A. CM@R shall furnish the District with certificates of insurance (ACORD form or equivalent approved by the District) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- B. All certificates and endorsements are to be received and approved by the District before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
- C. All certificates required by this Agreement shall be sent directly to District's Representative. The District project/contract number and project description shall be noted on the certificate of insurance. The District reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- D. If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the District's requirements, the contractor must:
 - 1. Submit a current insurance certificate (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the

insurance certificate is not submitted with the payment request and/or if the insurance or certificate is deficient or non-conforming.

11.10.Subcontractors

CM@Rs' certificate(s) shall include all Subcontractors as additional insureds under its policies or CM@R shall furnish to the District separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

11.11.Approval

Any modification or variation from the insurance requirements in this Contract shall be made by the District, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

11.12.Bonds and Other Performance Security

- A. Prior to execution of this Agreement, the CM@R must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP set forth in this Agreement and in strict compliance with A.A.C. R7-2-1112 – 1113 and 1116 and other applicable laws.
- B. Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- C. The bonds shall be made payable and acceptable to the District.
- D. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
 - 1. If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
 - 2. If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- E. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@R shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- F. All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "B+VI or better for the prior four quarters" by the A.M. Best Company.

12. Article 11 Indemnification

12.1. CM@R's General Indemnification

CM@R agrees to indemnify and save harmless the District, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of the Contract Documents or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM@R to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@R will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the District, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the District.

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13. Article 12 General Provisions

13.1. Contract Documents

- A. Contract Documents are as defined in Article 1.
- B. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
 - 1. On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.
 - 2. Specifications take precedence over Plans.
 - 3. In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract
- D. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- E. The Contract Documents form the entire agreement between District and CM@R and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

13.2. Amendments

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.3. Time is of the Essence

District and CM@R mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

13.4. Mutual Obligations

District and CM@R commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

13.5. Cooperation And Further Documentation

The CM@R agrees to provide the District such other duly executed documents as shall be reasonably requested by the District to implement the intent of the Contract Documents.

13.6. Assignment

Neither CM@R nor District shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

13.7. Contingent Assignment of Subcontracts

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 9.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Said contingent assignment shall be in all subcontracts.

13.8. Successorship

CM@R and District intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.9. Third Party Beneficiary

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the District and the CM@R, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of District and the CM@R and not for the benefit of any other party.

13.10. Governing Law

The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, in the Arizona County in which the Work is to be constructed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

13.11. Severability

If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.12. Legal Requirements

CM@R shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

13.13. Fair Treatment of Workers

The CM@R shall keep fully informed of all Federal and State laws, County and District ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. CM@R shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@R shall protect and indemnify the District and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

13.14. Independent Contractor

The CM@R is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the District the right to direct the CM@R as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@R shall follow the wishes of the District as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

13.15. District's Right Of Cancellation

All parties hereto acknowledge that this Agreement is subject to cancellation by the District pursuant to the provisions of Section 38 511, Arizona Revised Statutes and other applicable Arizona law.

13.16. Survival

All warranties, representations and indemnifications by the CM@R shall survive the completion or termination of this Agreement.

13.17. Covenant Against Contingent Fees

The CM@R warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the District Council, or any employee of the District has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the District shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

13.18.No Waiver

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

13.19.Notice

Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or email or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon:

- A. confirmation of receipt of a email,
- B. confirmed delivery by hand or standard overnight mail or
- C. upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CMAR:

To Be Determined General Contractor

Address: TBD GC

Email: TBD GC

Phone: TBD GC

To the District:

Roosevelt Elementary School District, #66

Superintendent: Dr. Dani Portillo

Address: 6000 S. 7th Street, Phoenix, AZ 85042

Email: danelia.portillo@rsd66.org

To the Design Firm

Name: Grace Design Studio

Representative: Saravanan Bala

Address: 2929 N. Central Avenue, 11th Floor, Phoenix, AZ 85012

Email: sbala@grace-design.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

13.20. Notices Related to Payment, Securities-in-lieu, Bonds

Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or email or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon:

- A. confirmation of read receipt of a facsimile transmission,
- B. confirmed delivery by hand or standard overnight mail or
- C. upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CMAR:

Name: To Be Determined General Contractor

Address: TBD GC

Email: TBD GC

To the District:

Roosevelt Elementary School District, #66

Superintendent: Dr. Dani Portillo

Address: 6000 S. 7th Street, Phoenix, AZ 85042

Email: danelia.portillo@rsd66.org

To the Design Firm

Grace Design Studio

Representative: Saravanan Bala

Address: 2929 N. Central Avenue, 11th Floor, Phoenix, AZ 85012

Email: sbala@grace-design.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed

address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

13.21. Equal Opportunity/Affirmative Action

- A. The CM@R shall comply with the provisions of this Agreement and specifically Exhibit E, including the requirements of District policies, pertaining to discrimination and accepting applications or hiring employees. The CM@R shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@R will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The CM@R further agrees that this clause and Exhibit E will be incorporated in all subcontracts, job consultant contracts of this Contract entered into by the CM@R.
- B. The District extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for District business and strongly encourages voluntary utilization of Disadvantaged and/or Minority owned or Woman owned business to reflect both the industry and community ethnic composition.
- C. The following paragraphs apply to the CM@R named herein and shall appear in all contracts between the CM@R and any and all Subcontractors who are employed on this Project. The CM@R further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.
 - 1. "Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice and shall strictly comply with all laws, regulations, requirements or terms and conditions as required by applicable federal, state, tribal, local laws including those noted in Form FHWA-1273 and the specifications and supplements attached thereto in Exhibit E.
 - 2. The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or

recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

3. The CM@R further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

13.22. Confidentiality Of Plans & Specifications

- A. Any plans or specifications you receive regarding this project are for official use only. You may not share them with others except as required to fulfill the obligations of your contract with the District.
- B. All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@R shall include the following language: "These plans are official use only and may not be shared with others except as required to fulfill the obligations of your contract with the District".

13.23. CM@R and Subcontractor Employee Security Inquiries

The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@R shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare. CM@R shall at a minimum ensure that all relevant personnel shall obtain a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 and A.R.S. § 15-512(H).

- A. Security Inquiries. CM@R acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@R shall exercise due diligence in conducting such checks and acting to prevent individuals who may compromise the health, safety and welfare of students, staff and/or community from being on the site or District property. CM@R shall perform all such security inquiries and shall make the results available to District for all employees considered for performing work (including supervision and oversight) under this Agreement. District may make further security inquiries. Whether or not further security inquiries are made by District, District may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@R for performing work under this Agreement. Employees rejected by District for performing services under this Agreement may still be engaged by CM@R for other work not involving the District. An employee rejected for work under this Agreement shall not be proposed to perform work under other District contracts or engagements without District's prior approval.
- B. Criteria for Evaluating Security Inquiries. Once formally adopted by District, criteria for excluding an individual from performing work under this Agreement shall be communicated by District to CM@R and used by CM@R as a factor in making its decision. Prior to such adoption, CM@R

shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by District in evaluating its own personnel.

- C. Additional District Rights Regarding Security Inquiries. In addition to the foregoing, District reserves the right to: (1) have an employee/prospective employee of CM@R be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@R 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@R performing work (including supervision and oversight) under this Agreement.
- D. Terms of This Provision Applicable to all of CM@R Contracts and Subcontracts. CM@R shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- E. Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to District 's entry into this Agreement and any breach thereof by CM@R may, at District's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@R to liability for its breach of contract.

13.24. Hazardous Materials

- A. Unless included in the Work, if the CM@R encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the District.
- B. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@R shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@R and the District may agree, in writing, to continue work in non-affected areas onsite.
- C. An extension of Contract Time may be granted in accordance with Article 6.
- D. The CM@R will comply with all applicable laws/ordinances

13.25. Computer Systems

CM@R shall warrant fault free performance in the processing of data and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work.

13.26. Traffic Control

CM@R will comply with all traffic control provisions as may be provided in the technical specifications.

13.27. Contractor Compliance

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the District upon request. These warranties shall remain in effect through the term of the contract.

The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor, by its signature below, warrants and certifies that it has reviewed A.R.S. § 15-512 including but not limited to sub-paragraph H and further warrants that it shall comply and cause any employee, subcontractor or employee of subcontractor to comply with A.R.S. § 15-512 and as set forth in 12.22 et seq, herein.

14. Signature Page

Date: _____

Roosevelt Elementary School District, #66

Irene Lopez Academy of the Arts Replacement

at Irene Lopez Academy of the Arts

Project # 26-001 Contract # 26-CMAR-001

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The CM@R agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

Guaranteed Maximum Price No. --

(Written dollar Amount)

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Roosevelt Elementary School District, #66, an Arizona School District

BY: _____

Dr. Dani Portillo, Superintendent

Date:

To Be Determined General Contractor, a legal entity

By _____, President

Date:

15. Exhibit A Project Description

Following is a brief description of the Project for which the construction phase service services specified in this Contract are to be performed:

CM@R Design Phase and Construction Services as necessary and/or as set forth in the Contract Documents for the construction of the Irene Lopez Academy of the Arts Irene Lopez Academy of the Arts Replacement as may be more fully set forth in the documents provided pursuant to the Contracts herein.

15.1. Project Description

The full street or physical address of the Project is:

Irene Lopez Academy of the Arts

Street Address: 4610 S. 12th Street, Phoenix, AZ 85040

Legal Address: 4610 S. 12th Street, Phoenix, AZ 85040

Draft

16. Exhibit B Approved GMP Proposal

16.1. GMP Proposal

Agreed upon GMP to be uploaded here

Draft

17. Exhibit C Technical Specifications

17.1. Technical Specifications

TBD

Draft

18. Exhibit D Construction Drawings

Three sets of construction drawings, as referenced herein, are on file with the

18.1. Dates of Construction Drawings

- A. Design Professional
- B. District Manager
- C. CM@R Contractor

Draft