

## **SUPPLEMENTAL GENERAL PROVISIONS TO THE CONTRACT**

### **SECTION A: GENERAL PROVISIONS**

**ARTICLE 1. Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by and between the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract. The Contract may be amended or modified only by such signed instrument or by extra work or change order or by written interpretation and/or instruction issued by Design Professional and/or LCCC.

**ARTICLE 2. Applicable Law/Venue.** The construction, interpretation and enforcement of the Contract shall be governed by the Laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

**ARTICLE 3. Assignment.** CMAR hereby assigns to LCCC (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by CMAR for performance of any part of the Work, which assignment will be effective upon acceptance by LCCC in writing and only as to those subcontracts and purchase orders which LCCC designates in its acceptance. It is agreed and understood that LCCC may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by CMAR to LCCC and its assigns. It is further agreed and understood that such assignment is part of the consideration to LCCC for entering into this Contract with CMAR and may not be withdrawn prior to final completion.

Other than as stated above, CMAR shall not assign the Contract without the written consent of LCCC, nor shall CMAR assign any monies due or to become due to it hereunder, without the previous written consent of LCCC. CMAR shall not use the Contract, or any portion thereof, as collateral for any financial obligation, without the prior written permission of LCCC.

LCCC may assign the right to enforce this Contract against CMAR to a third party. Any assignment under this Article of these Supplemental General Provisions is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**ARTICLE 4. Audit/Access to Records.** LCCC and any of its representatives shall have access to any books, documents, papers, and records of CMAR which are pertinent to this Contract.

**ARTICLE 5. Availability of Funds.** Each payment obligation of LCCC is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by CMAR, the Contract may be terminated by LCCC at the end of the period for which the funds are available. LCCC shall notify CMAR at the earliest possible time of the services which will or may be affected by a shortage of funds. LCCC shall pay all amounts due CMAR for services

performed to the date of termination, including payment for services rendered to date and expenses incurred to date. No penalty shall accrue to LCCC in the event this provision is exercised, and LCCC shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit LCCC to terminate this Contract in order to acquire similar services from another party.

**ARTICLE 6. Compliance with Laws.** CMAR shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract, and shall obtain all required permits and approvals. Any Work performed or materials or equipment furnished which do not conform to the requirements of said laws, ordinance, rules and regulations shall be changed to conform thereto by CMAR at its sole expense except to the extent such work was required by design documents.

**ARTICLE 7. Continuation of Contract/Site Access.** It is expressly agreed by the parties to this Contract that continuation of the Contract is entirely contingent upon continued access to the site.

**ARTICLE 8. Contract Language.** Words and abbreviations which have well-known technical or trade meanings are used in the Contract, its attachments, and other Contract Documents in accordance with such recognized meanings. In the event that any interpretation of the Contract is needed, CMAR should contact and direct questions to the Design Professional and LCCC Representative.

**ARTICLE 9. Indemnification.** CMAR shall release, indemnify, and hold harmless LCCC and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses, and liability arising out of CMAR's failure to perform any of CMAR's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of CMAR's malpractice or malfeasance.

**ARTICLE 10. Independent Contractor.** CMAR shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the Laramie County Community College for any purpose. CMAR shall be free from direction over control as to details of performance under this Contract, shall assume sole responsibility for any debts or liabilities that may be incurred by CMAR in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing CMAR or its agents and/or employees to act as an agent or representative for or on behalf of the LCCC, or to incur any obligation of any kind on the behalf of the LCCC. CMAR agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance and/or similar benefits available to Laramie County Community College employees will inure to the benefit of CMAR or CMAR's agents and/or employees as a result of this Contract.

**ARTICLE 11. Joint and Several Liability of Joint Venturers.** If CMAR is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**ARTICLE 12. Kickbacks.** CMAR certifies and warrants that no gratuities, kickbacks nor contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If CMAR breaches or violates this warranty, LCCC may, at its discretion, immediately terminate this Contract without liability to LCCC, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**ARTICLE 13. Nondiscrimination.** CMAR shall comply the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105 *et seq.*), and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto. CMAR shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of the Contract. Federal Law requires CMAR to include all relevant special provisions of this Contract in every subcontract awarded in excess of ten thousand dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

**ARTICLE 14. Nonresident Contractors.** Wyo. Stat. § 17-16-1501 requires nonresident corporations to be registered with the Wyoming Secretary of State's office. Wyo. Stat. § 27-1-106(a) provides that firms, corporations or employers of any kind who are nonresident employers and expect to pay wages in the state of Wyoming in excess of ten thousand dollars (\$10,000.00) monthly, or one hundred twenty thousand dollars (\$120,000.00) annually, as a result of conducting business within Wyoming, are required to file with the director of the department of employment a surety bond or other security meeting these requirements. By signing this Contract, CMAR agrees to abide by these provisions and to contact the Wyoming Department of Workforce Services to obtain proof that it is in good standing with both its Unemployment Tax Division and Worker's Safety and Compensation Division and to provide such proof to LCCC upon request.

**ARTICLE 15. Notice.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties either by regular mail or delivery in person at the address provided under this Contract.

**ARTICLE 16. Performance Before Contract is Executed.** CMAR shall not begin Work on this Contract before this Contract is fully executed. In no event shall LCCC pay CMAR for any Work performed before this Contract is fully executed.

**ARTICLE 17. Prior Approval.** The Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the LCCC shall not mark payments on this Contract, until this Contract has been reduced to writing, filed with and approved by the LCCC.

**ARTICLE 18. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

**ARTICLE 19. Sovereign Immunity.** LCCC do not waive sovereign immunity by entering into this Contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**ARTICLE 20. Taxes.** CMAR shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**ARTICLE 21. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**ARTICLE 22. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

**ARTICLE 23. Ownership of Materials.** Except where progress payments have been made for the invoiced value of acceptable materials delivered to the site but not yet incorporated in the Work, as provided in Article 71e, immediately upon the performance of any part of the Work, as between CMAR and LCCC, title thereto shall vest in LCCC; provided, however, the vesting of such title shall not impose any obligations on LCCC or relieve CMAR of any of its obligations hereunder.

**ARTICLE 24. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

## **SECTION B. DEFINITIONS**

**ACT OF GOD** means an act occasioned exclusively by violence of nature without the interference of any human LCCC.

**CONTRACT SUM** is the total amount payable by LCCC to CMAR for the performance of the Work under the Contract Documents.

**CONTRACT TIME** is the period of time allotted in the Contract Documents for substantial completion of the Work, including adjustments thereto reflected by duly executed change orders.

**DAY** means calendar day unless otherwise specifically designated.

**DRAWINGS AND SPECIFICATIONS.** Drawings are the portion of the Contract Documents showing in accurate graphic or pictorial form the design, location, dimensions, and relationships of the elements of a project. Specifications are a document that specifies the operational requirements of a component or installation.

**FINAL COMPLETION** shall mean the time when LCCC notifies CMAR of its acceptance of the Project.

**LABOR AND MATERIALS INCORPORATED IN THE WORK** means the Work done and materials furnished and in permanent place.

**PROJECT** is as defined in the Contract, Section 2, and means the total construction of which the Work performed under the Contract Documents may be the whole or a part.

**SUBSTANTIAL COMPLETION** shall mean the time when the "Certificate of Substantial Completion" is agreed to and signed by Design Professional, LCCC Representative, and CMAR.

**WARRANTY PERIOD** shall mean one (1) year from the date of final acceptance, not including any manufacturer's warranties, of the completed Work by LCCC. Equipment or facilities which have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be warranted for one (1) year from the date of seasonally appropriate tests and acceptance, in writing, by LCCC.

**WORK** means the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

## **SECTION C. LCCC REPRESENTATIVE AND DESIGN PROFESSIONAL**

**ARTICLE 25.** State Project Manager's Status. This Section has been removed.

**ARTICLE 26.** Design Professional and LCCC Representative's Decision

- A.** Except as otherwise provided in the Contract Documents, Design Professional shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by LCCC and CMAR. Should CMAR discover any conflicts, omissions, errors or inconsistencies in the Drawings or Specifications, or have any question about the interpretation or clarification of the

Contract Documents or whether Work is within the scope of the Contract Documents, or if it appears that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, CMAR shall notify the Design Professional in writing and request interpretation, clarification or the furnishing of additional detailed instructions. Such questions shall be responded to with reasonable promptness by the Design Professional. Should CMAR proceed with Work affected before receipt of a response from the Design Professional, any Work which is not in accordance with Design Professional's interpretation or instructions shall be removed or replaced and CMAR shall be responsible for any resulting damage, defect or added cost.

- B.** If CMAR disagrees with an interpretation, clarification or instruction given by Design Professional, or believes that the Work is not within the scope of the Contract Documents, CMAR shall proceed diligently with the performance of such Work and shall comply with any instructions, interpretation or clarification given by Design Professional. After receipt of an interpretation, clarification or instruction from Design Professional, CMAR may follow the procedure set forth in Article 78. Failure to comply with Article 78 shall constitute a waiver of any and all right to adjustment of the Contract Sum or Contract Time due to such Work.
- C.** Pending a decision by Design Professional and LCCC Representative, CMAR shall proceed diligently with the performance of the Contract and in accordance with LCCC Representative's instructions, interpretations, or clarification, unless the parties to the Contract otherwise agree in writing.

## **SECTION D. CMAR'S RESPONSIBILITIES**

### **ARTICLE 27. Superintendent, Supervision**

- A.** CMAR shall have on the Project at all times a designated agent, who is a competent supervisor or superintendent, and any necessary assistants capable of reading and understanding the Contract, including the Drawings and Specifications, who has experience in the type of Work being performed. The superintendent(s) must be satisfactory to LCCC Representative and shall not be changed except with the consent of LCCC Representative, unless the superintendent proves to be unsatisfactory to CMAR and ceases to be in its employ. This person shall have full authority to execute written orders or directions given by Design Professional and LCCC Representative without delay, and to provide materials, equipment, tools, labor and incidentals promptly, as required.
- B.** CMAR shall use its best skill and attention in supervising the Work. It shall carefully study and compare all Drawings, Specifications and other instructions and shall at once report to Design Professional and LCCC Representative any error, inconsistency, omission or conflict which it may discover. Failure to promptly report any such error, inconsistency, omission or conflict shall constitute a waiver of any claim based thereon.

### **ARTICLE 28. Separate Contracts**

- A.** LCCC reserves the right to perform construction or operations related to the Project with LCCC's own forces, and to let other contracts in connection with this Work or other portions of the Project, under conditions of a contract identical or substantially similar to this Contract. If CMAR claims that delay or additional cost is caused by the award of other contracts, or LCCC's operations, in connection with this Project, CMAR shall follow the procedures provided in Article 78 of these Provisions.
- B.** If separate contracts are awarded for different portions of the Project or other construction or Work on the site, the term "contractor" in the Contract Documents shall mean the contractor, for each portion of the Project, named in each separate LCCC-Contractor agreement.
- C.** As directed, CMAR shall participate with other separate contractors, Design Professional and LCCC Representative in reviewing all the construction schedules. CMAR shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedule shall then be the schedule to be used by CMAR, separate contractors, Design Professional and LCCC Representative until subsequently revised.

- D. CMAR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work and shall properly connect and coordinate its Work and theirs.
- E. If any of CMAR's Work depends upon proper execution or results of the work of LCCC or any other contractor, CMAR shall, before beginning that portion of CMAR's Work, inspect the other contractor's or LCCC's work and promptly report to Design Professional and LCCC Representative any defects in such Work that render it unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so inspect or report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work, except as to defects which may develop in the other contractor's work after the execution of CMAR's Work and which could not have been discovered or readily anticipated by or as the result of inspection. Failure to inspect and report as required by this provision shall constitute a waiver of any claim arising out of an alleged defect in LCCC's or other contractor's work.
- F. To ensure the proper execution of its subsequent Work, CMAR shall review Work already in place and shall at once report to Design Professional and LCCC Representative any discrepancy between the executed Work and the Drawings and Specifications.
- G. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.
- H. CMAR shall promptly remedy damage caused by CMAR to completed or partially completed construction and to property of LCCC or separate contractors.

**ARTICLE 29. Subcontracts/Materials/Supplies**

- A. A subcontractor is a person or entity who has a direct contract with CMAR to perform a portion of the Work at the site. The term does not include a separate contractor or subcontractors of a separate contractor.
- B. A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the Work at the site.
- C. CMAR agrees that it is as fully responsible to LCCC for the acts and omissions of its subcontractors and their agents, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.
- D. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and LCCC.
- E. By written agreement, CMAR shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to CMAR by the terms of

the Contract Documents, and to assume toward CMAR all obligations and responsibilities which CMAR, by these documents, assumes toward LCCC Representative. Said agreement shall preserve and protect the rights of LCCC under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights.

CMAR shall require each subcontractor to enter into similar contracts with its sub-subcontractors. CMAR shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article.

Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors. Copies of all subcontracts and sub-subcontracts shall be filed with LCCC.

**F.** CMAR shall not change subcontractors without LCCC's written consent, which shall not be unreasonably withheld. If a selected trade contractor or subcontractor fails to execute a subcontract after being selected or defaults in the performance of its Work, the CMAR may, with LCCC's approval, and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so. Such decisions will be made in consideration of the exigencies of the situation and the Project cost and schedule.

**G.** CMAR's Obtaining of Bids/Proposal for the Work

(i) CMAR shall publicly advertise and solicit competitive lump sum bids that identify the work packages from subcontractors for the performance of all Work and in accordance with Wyo. Stat. § 16-6-103. Bids should follow the division format used to develop the GMP cost estimates. For proper comparative pricing evaluation, the instruction to bidders on invitation to bids shall identify the work packages/divisions in the format mentioned above for which bids are being requested and must include a copy of its Certificate of Residency to receive preference. CMAR shall also clearly direct bidders who provide lump sum pricing for more than one division of work to delineate pricing for each division separately.

(ii) CMAR will schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences. CMAR shall respond in writing, to all parties attending, to questions raised in these conferences.

(iii) Pursuant to Wyo. Stat. § 16-6-1001, CMAR shall conduct an open bid process in compliance with the Wyoming contractor preference laws before awarding any subcontracts for Work. The open bid process shall be at a location agreed upon by the LCCC Representative. The CMAR must receive a minimum of

three (3) bids for each work package/division to be accepted without a waiver approved by the LCCC. Bid packages/divisions from subcontractors and material suppliers shall include a copy to be supplied to the LCCC at bid opening.

- (iv) CMAR will review all subcontractor and material bids with LCCC within two (2) business days after bidding opening. CMAR will promptly identify the difference between CMAR's estimated Cost of the Work, versus the actual award cost as determined by the bidding package. If the award cost exceeds CMAR's estimated cost in the GMP, any necessary portion of the contingency identified in the Project Summary Sheet shall be applied, subject to LCCC's approval, to cover any overrun and any under run amount shall be used to increase the Contingency.
- (v) CMAR will make all bids/proposals publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.
- (vi) CMAR may seek to self-perform portions of the Work which it identifies and documents. The CMAR must submit a bid for the self-performance Work in the same manner as all other trade contractors or subcontractors, but must submit such bid directly to the LCCC Representative at least twenty-four (24) hours prior to receiving similar bids from other parties. The LCCC will determine whether the CMAR's bid/proposal provides the best value for LCCC. The LCCC's decision shall be final and not subject to review. If selected as best value, CMAR must perform in accordance with the same terms and conditions offered to other subcontractors. For payment purposes, the CMAR shall account for self-performance Work in the same manner as it does all other subcontract costs. In the event an adjustment is required to the cost of any awarded, self-performed Work, the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the change order process.

#### **ARTICLE 30. Project Site**

- A. Examination of Site. By executing the Contract, CMAR represents that it has examined the site including all locations affected, viewed patent conditions, familiarized itself with the local conditions under which the Work is to be performed and has compared it with the Plans and Specifications, has carefully examined all of the Contract Documents, has compared them with the Drawings and Specifications, and has satisfied itself as to the conditions under which the Work is to be performed before entering into this Contract. Except as provided in subparagraph b, no allowance shall subsequently be made to CMAR for site conditions differing materially from those indicated in this Contract, and in no event shall any allowance subsequently be made to CMAR on account of any error or omission on its part or its

negligent failure to acquaint itself with the conditions of the site or with adjacent improvements.

**B. Differing Site Conditions.** If CMAR discovers the following conditions, CMAR shall promptly, and before such conditions are disturbed, notify Design Professional, LCCC Representative in writing of:

- (i) Subsurface or latent physical conditions below the surface or in an existing structure differing materially from those indicated in this Contract; or
- (ii) Unknown physical conditions below the surface or in an existing structure, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

Design Professional and LCCC Representative shall promptly investigate the conditions, and if such conditions do materially so differ and cause an increase or decrease in CMAR's cost of or the time required for performance of any part of the Work under this Contract, whether or not changed as the result of such conditions, an equitable adjustment may be made and the Contract modified in writing accordingly. No request of CMAR under this clause shall be allowed unless CMAR has given the notice required in this Article, and no request by CMAR for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Contract. The procedure specified in Article 78 shall apply.

**ARTICLE 31. Means, Methods and Coordination**

- A.** CMAR shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of CMAR's Work under the Contract.
- B.** CMAR shall cooperate with Design Professional and LCCC Representative and their employees and representatives.
- C.** CMAR shall provide sufficient labor to perform the Work. If CMAR fails to provide sufficient labor, Design Professional and LCCC Representative may give CMAR written notice, instructing CMAR to correct the problem within the time specified in the notice. If the problem has not been corrected within the time specified in the notice, Design Professional and LCCC Representative may utilize the provisions in the Contract for correcting defective or nonconforming Work.
- D.** CMAR shall be responsible to LCCC for the acts and omissions of its employees, subcontractors and their agents and employees, and other persons performing any of the Work under a Contract with CMAR. CMAR shall at all times enforce strict

discipline and good order among its employees and shall ensure its employees exhibit appropriate professional behavior and are skilled in the tasks assigned to them. Design Professional and LCCC Representative may direct CMAR to promptly remove a person who does not comply with this provision from the Project site for the duration of the Contract.

Should CMAR cause damage to any other contractor or any subcontractor on the Project, CMAR agrees to use its best efforts to settle the controversy with such contractor or subcontractor by agreement. If such contractor or subcontractor sues LCCC on account of any damage alleged to have been sustained, LCCC shall notify CMAR, who shall indemnify and hold harmless LCCC against any judgment. This section does not waive or alter the sovereign immunity provisions of this Contract.

**ARTICLE 32. Allowances**

- A.** CMAR shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as Design Professional and LCCC Representative may direct, but CMAR shall not be required to employ persons against whom it makes a reasonable objection.
- B.** Unless otherwise provided in the Contract Documents:
- (i) Materials and equipment under an allowance shall be selected promptly to avoid delay in the Work;
  - (ii) These allowances shall cover the cost to CMAR, less any applicable trade discount, of the materials and equipment required by the allowance delivered to the site, and all applicable taxes;
  - (iii) The allowances shall not include CMAR's costs for unloading and handling on the site, labor, installation costs, overhead or profit. Such amounts shall be included in the Contract Sum and not in the allowance; and
  - (iv) CMAR declares that the Contract Sum includes such sums for expenses and profit on account of allowances as it deems proper. No demand for expenses or profit other than those included in the Contract Sum shall be allowed.

**ARTICLE 33. Clean Up**

- A.** CMAR shall at all times keep the site free from accumulation of waste material or rubbish caused by its operations. At the completion of the Work, CMAR shall remove all waste materials and rubbish and its tools, equipment, machinery, materials and supplies from and about the building and all tools, scaffolding, construction equipment, machinery and surplus materials, whether belonging to it or its

subcontractors, and shall leave the Work "broom clean" or its equivalent, unless more exactly specified in the Contract Documents.

- B.** In case of dispute between CMAR and any other contractor employed on or about the structure or structures upon which the Work is to be done as to the responsibility for the removal of waste material, rubbish, tools, scaffolding and surplus materials, or in case the same be not promptly removed as herein required, LCCC may remove the waste materials, rubbish, tools, scaffolding and surplus materials and charge the cost to the separate contractors, as Design Professional and LCCC Representative shall determine to be just.
- C.** CMAR shall dispose of all waste and rubbish in accordance with all applicable laws.
- D.** If CMAR fails to clean up during or at the completion of the Work, LCCC may issue a change order deducting from the payments due CMAR the cost of correcting the problem, and if the payments are not sufficient to cover the cost, CMAR shall pay the difference to LCCC.

**ARTICLE 34. Cutting, Fitting, Patching and Digging**

- A.** CMAR shall do all cutting, fitting or patching of its Work that may be required to make its several parts come together properly and be fitted to receive or be received by the Work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and CMAR shall do all that is necessary to accomplish the joining of said several parts in a neat and workmanlike manner to the satisfaction of Design Professional and LCCC Representative.
- B.** CMAR shall not damage or endanger any portion of the Work to be performed under this Contract, or the work of LCCC or that of any separate contractor, by cutting, patching, excavating or otherwise altering any Work. CMAR shall not cut or otherwise alter the Work of LCCC or any separate contractor, except with the written consent of LCCC and of such separate contractor; such consent shall not be unreasonably withheld. CMAR shall not withhold from LCCC or any separate contractor its consent to altering the Work when, in the opinion of Design Professional and LCCC Representative, such alteration is necessary.

**ARTICLE 35. Use of Premises**

- A.** CMAR shall confine its apparatus, the storage of materials and the operations of its workers to limits indicated by law, ordinances, permits, the Contract Documents, and directions of LCCC, given through Design Professional and LCCC Representative, and shall not unreasonably encumber the premises with its materials or equipment.
- B.** CMAR will preserve and protect all existing vegetation, such as trees, shrubs and grass on or adjacent to the site of Work, which is not to be removed and which does

not unreasonably interfere with the construction Work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by Design Professional and LCCC Representative.

- C. CMAR will protect from damage all existing improvements or utilities at or near the site of the Work and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If CMAR fails or refuses to repair any such damage promptly, LCCC may have the necessary Work performed and charge the cost thereof to CMAR.
- D. CMAR shall not load or permit any part of the structure to be loaded with a weight that will endanger safety.
- E. CMAR shall enforce LCCC's instructions, given through Design Professional and LCCC Representative, regarding signs, advertisements, fires and smoking. No advertising signs or name labels of any description shall be placed on or near the premises without LCCC's written consent thereto.

**ARTICLE 36. Safeguards**

- A. CMAR shall erect and maintain satisfactory and sufficient safeguards and warnings against the occurrence of accidents, injuries or damage to any person or property and shall alone be responsible for such accidents, injuries or damage if the same should occur in connection with CMAR's Work.
- B. CMAR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- C. CMAR shall designate a responsible member of its organization employed at the site whose duty shall be the prevention of accidents. This person shall be CMAR's superintendent unless otherwise designated by CMAR in writing to, and agreed by, Design Professional and LCCC Representative.

**ARTICLE 37. Protection of Work and Property.** CMAR shall continuously maintain adequate protection for all its Work and materials from damage, destruction, or loss, and shall protect LCCC's property from damage occurring as the result of Work performed under this Contract. CMAR shall release, indemnify, and hold LCCC harmless from and against any such damage, destruction, loss or injury resulting from inadequate protection. CMAR shall adequately and sufficiently protect adjacent property against damage caused by its operations.

**ARTICLE 38. Assumption of Risk.** CMAR shall, and it does, hereby assume the responsibility for damage to its Work and materials resulting from all risks of physical loss or damage, prior to the completion and acceptance of its Work. CMAR shall, at its own cost and expense, repair or replace any Work or materials damaged or destroyed and shall obtain insurance to pay for the cost of making any such replacement or repair. Nothing in this Article shall be construed to relieve CMAR of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the Work and to materials, tools and equipment used to perform the Work.

**ARTICLE 39. Emergencies.** In an emergency affecting the safety of persons or property, CMAR shall take all necessary and proper steps to prevent any threatened damages or injury. CMAR shall make every reasonable effort to immediately communicate with Design Professional and LCCC Representative concerning the emergency. The inability of CMAR to establish communication with Design Professional and LCCC Representative will not relieve CMAR of the responsibility for mitigating injury or damage to persons or property.

**ARTICLE 40. Photographs.** After construction operations have been started at the site, CMAR shall have an average of ten (10) color photographs of the Work taken each month until completion of the Work. The actual number and location of views to be taken each month shall be as directed by Design Professional and LCCC Representative. Photographs shall be kept electronically and transferred to the Design Professional and LCCC Representative.

**ARTICLE 41. Wage and Hour Provisions.** Pursuant to the Wyoming Prevailing Wage Act of 1967, Wyo. Stat. §§ 27-4-401 through 413 not less than the prevailing hourly rate of wages for work shall be paid to all workers.

**ARTICLE 42. Intellectual Property and Royalties.** CMAR shall pay all royalties and license fees. CMAR recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by CMAR or its subcontractors will violate any such restriction. CMAR shall defend all suits or claims for infringement of any patent rights and shall save LCCC harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer(s) is required by the Contract. However, if CMAR has reason to believe that the required design, process or product is an infringement of a patent, CMAR shall be responsible for such loss unless such information is promptly furnished to Design Professional and LCCC Representative.

**ARTICLE 43. Permits and Regulations.** CMAR shall give all notices and pay all fees necessary or proper to be given or paid in connection with the performance of the Contract, and shall obtain and pay for all permits and licenses (except permanent easements) and all inspections and certificates of inspection and occupancy required or made by any governmental authority having jurisdiction over all or any part of the Work included in this Contract. Before Final Payment, CMAR shall deliver to Design Professional and LCCC Representative all licenses, permits, and certificates of inspection.

## **SECTION E. RIGHTS OF LCCC, STOP WORK AND TERMINATION**

**ARTICLE 44. LCCC's Right to do the Work**

- A. If CMAR defaults on, or fails to perform the Work in accordance with the Contract and fails within twenty (20) days after receipt of written notice from Design Professional and LCCC Representative to commence and continue correction of such default, or fails to perform with diligence and promptness, LCCC may, without prejudice to other remedies LCCC may have, stop work and/or make good such deficiencies. In such case, an appropriate change order shall be issued deducting from the payments due CMAR the cost of correcting all deficiencies, including any additional compensation for Design Professional and LCCC Representative's and LCCC's additional services and expenses made necessary by CMAR's default or failure to perform.
- B. If it becomes necessary for LCCC to take over the completion of any part of this Contract, all amounts owed to CMAR, including the withheld percentage, shall first be applied toward the cost of completion of the Contract, as provided in Wyo. Stat. § 16-6-703. If the payment(s) otherwise due CMAR are not sufficient to cover such amount, CMAR shall pay the difference to LCCC.

**ARTICLE 45. Stop Work.** If CMAR fails to correct defective Work or fails to perform the Work in accordance with the Contract, LCCC may, by written instrument, order CMAR to stop the Work or any portion thereof, as provided in LCCC's right to perform provisions, until the cause for such order has been eliminated. However, this right to stop the Work shall not give rise to any duty on the part of LCCC to exercise this right for the benefit of CMAR or any other person or entity.

**ARTICLE 46. Termination**

- A. LCCC may terminate the Contract for any of the following reasons:
- (i) violation of any material provision of the Contract;
  - (ii) failure to make prompt payment to subcontractors or for materials or labor;
  - (iii) failure to supply an adequate working force of properly skilled workers;
  - (iv) failure to provide material of proper quality or quantity;
  - (v) disregard of the written instructions or interpretations of Design Professional and LCCC Representative;
  - (vi) failure or refusal to prosecute the Work or any separable part thereof with such diligence as will result in its completion within the time specified in the Contract Documents;

- (vii) failure to correct defective Work or Work not done in accordance with the Contract Documents; or
  - (viii) negligent performance.
- B.** If any ground for termination exists, LCCC may give written notice to CMAR and CMAR's sureties that, if specified defaults are not remedied within the time set forth in the notice not less than five (5) work days, CMAR's right to proceed with the Work shall automatically terminate.
- C.** If LCCC terminates the Contract for cause, LCCC may:
- (i) require CMAR's sureties to complete the Work;
  - (ii) perform the Work with its own forces; or
  - (iii) employ another contractor to complete the Work.
- D.** If LCCC terminates the Contract for cause, LCCC or its representatives may use, in completing the Work, such materials, tools, equipment and appliances which are on the site of the Work and necessary for its completion.
- E.** The remedies specified above shall be in addition to all other remedies which LCCC may otherwise have.
- F.** If LCCC terminates the Contract for cause, or if CMAR abandons the Work, CMAR shall not be entitled to receive any portion of the amount to be paid under the Contract until the Work is fully completed. If the sum necessary to complete the Work exceeds the unpaid balance, CMAR and its sureties shall be liable to LCCC for the excess.
- G.** Should an act of God cause substantial damage to all or a portion of the Work, or should LCCC's convenience necessitate termination, LCCC shall have the option of terminate the Contract. If LCCC exercises the option to terminate, it shall issue a notice to terminate. The notice to terminate may provide for CMAR to perform any Work deemed by Design Professional and LCCC Representative as necessary to put the Project in satisfactory condition for the termination of all Work, and CMAR shall be paid for such Work as provided in Article 65 of these Supplemental General Provisions. Upon the issuance of the notice of termination, CMAR shall be relieved of further responsibilities for damage to the Work (excluding materials not already incorporated into this Work) which responsibilities are specified in Article 38 of these Supplemental General Provisions, and will not be required to perform any further Work on the Project other than that specified in the notice of termination.

- H.** If LCCC terminates this Contract for any reason, CMAR shall not be entitled to its anticipated profits for the Work which would have been performed but for termination.
- I.** If CMAR has placed an order, before such termination, for materials specially manufactured for the Project, which materials are not suitable for use in other projects of LCCC or sale to others in the ordinary course of the vendor's business, CMAR will be paid the actual cost to CMAR or the cancellation charges, if any, assessed by the vendor. The determination of whether the order shall be completed or canceled shall be made by Design Professional and LCCC Representative. Any material paid for shall become the property of LCCC and the actual cost of any further handling shall be paid by LCCC.
- J.** On receipt of written notice of termination from LCCC, whether for default or convenience of LCCC, CMAR shall:
- (i) stop all Work under the Contract on the date of and to the extent specified in the notice of termination;
  - (ii) place no further orders or subcontracts for materials, equipment or services except as may be necessary for completion of such portions of the Work expressly excluded under the notice of termination;
  - (iii) cancel or terminate all orders or subcontracts to the extent that they relate to the performance of Work covered by the notice of termination; and
  - (iv) comply with all other requirements of LCCC as may be specified in the notice of termination.
- K.** CMAR may terminate this Contract for cause, if LCCC breaches a material term of the Contract. CMAR shall provide LCCC sixty (60) days' notice of its intent to terminate the Contract. If CMAR terminates the Contract for cause, CMAR shall be entitled to payment for Work performed up to the date of termination. CMAR shall not be entitled to its anticipated profits under the Contract.

**ARTICLE 47. Uncovering of Work**

- A.** If a portion of the Work is covered contrary to Design Professional and LCCC Representative's request or contrary to the requirements of the Contract Documents, the Work must, if required in writing by Design Professional and LCCC Representative, be uncovered for Design Professional and LCCC Representative's inspection and be replaced at CMAR's expense without change in the Contract Time.
- B.** If a portion of the Work is covered and Design Professional and LCCC Representative did not request inspection of such portion of the Work before it was

covered, Design Professional and LCCC Representative may request to see such Work, and CMAR shall uncover it. If such Work is determined to be in accordance with the Contract requirements, costs of uncovering and replacement shall, by change order, be charged to LCCC. If such Work is determined not to be in accordance with the Contract requirements, CMAR shall pay such costs unless the condition was caused by LCCC or a separate contractor.

**ARTICLE 48. Correction of Work Before Final Payment**

- A. All Work which does not conform to the requirements of the Contract, or which was unauthorized, will be considered unacceptable, and may be ordered to be removed and replaced in an acceptable manner, at CMAR's expense, as determined by Design Professional and LCCC Representative. CMAR shall promptly, and in no case longer than thirty (30) days after receipt of written notice of defect, correct Work which is rejected by Design Professional and/or LCCC Representative or fails to conform to the Contract requirements, whether such defect is observed before or after substantial completion, and whether or not the Work is fabricated, installed or completed. CMAR shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for Design Professional and LCCC's services and expenses made necessary thereby.
- B. If CMAR fails to comply with an order to correct defective Work, LCCC may follow the Contract provisions for issuance of a stop work order (Article 45), or, under LCCC's right to perform provision (Article 44), LCCC may have unauthorized or unacceptable Work removed, at CMAR's expense, and may deduct from any monies due or which become due to CMAR all costs of removal and correction. CMAR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of LCCC or separate contractors caused by CMAR's correction or removal of Work under this provision.
- C. If LCCC prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a change order will be issued to reflect a reduction in the Contract Sum where appropriate. Such reduction shall be made whether or not final payment has been made, and LCCC may condition its acceptance of nonconforming Work upon CMAR's agreement to a longer warranty period for the nonconforming Work.

**ARTICLE 49. Warranties and Correction of Work After Final Payment**

- A. In addition to the specific guarantees and warranties required by the Drawings and Specifications, CMAR guarantees and warrants all the Work to be performed and all the materials to be furnished under this Contract against defects in materials or workmanship, including Work not done in accordance with the Contract Documents, for a minimum period of one (1) year, or longer as specified by material supplier or subcontractor, from the date of final acceptance of the completed Work by LCCC.

CMAR shall be responsible for damages resulting from defects and Work not done in accordance with the Contract Documents. In the event that LCCC occupies all or a portion of the premises, in advance of substantial completion, pursuant to Article 75, the warranty period for that portion of the premises shall commence as of the actual date of occupancy.

- B.** CMAR shall, within a reasonable time, but in no case longer than thirty (30) days after receipt of written notice thereof, repair any defects in materials or workmanship, and replace any defective material, or correct any Work not done in accordance with the Contract Documents, which may be discovered within the warranty period, and repair any damage resulting from the repair or replacement of such defects. CMAR is also responsible for the correction of Work not done in accordance with the Contract Documents, at its own expense, and without cost to LCCC. In the event CMAR fails to remedy any such defect within a reasonable time, which in no case shall be longer than thirty (30) days after receipt of such written notice, LCCC may do the Work or proceed to have such defect remedied at CMAR's expense, and CMAR shall pay all costs and charges accruing for such Work and any other damages sustained by LCCC. CMAR shall bear any costs of correcting destroyed or damaged construction, whether completed or partially completed, of LCCC or separate contractors when cost(s) are the result of CMAR's correction or removal of Work under this provision.
- C.** Nothing contained in this Article or in any specific warranty required by the Specifications, shall operate to relieve CMAR from responsibility, after expiration of the guarantee or warranty period(s), for damages resulting from latent defects, departures from the requirements of the Contract, fraud or gross mistakes. Nothing contained in Articles 47, 48 or 49 shall be construed to establish a period of limitation with respect to other obligations which CMAR might have under the Contract Documents or at law. The one (1) year warranty period relates only to the specific obligation of CMAR to correct the Work and has no relationship to the time within which the obligation to comply with the Contract may be enforced, nor to the time within which proceedings may be commenced to establish CMAR's liability with respect to CMAR's obligations, other than specifically to correct the Work.

## **SECTION F. PLANS, DRAWINGS, SPECIFICATIONS, SAMPLES & MODELS**

### **ARTICLE 50. Correlation and Intent of Documents**

- A.** The Drawings and the Specifications are intended to be complementary, and what is required by one shall be binding as if required by all.
- B.** Titles and headings to sections and paragraphs, tables of contents and indices in the Contract Documents are set forth for convenience and shall not be taken as a correct or complete segregation of the several units of materials, labor or other requirements. No responsibility, either direct or implied, will be assumed by LCCC for omissions or

duplications by CMAR or its subcontractors due to real or alleged errors in arrangement of matters in the Contract Documents.

- C. No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed and approved by Design Professional, LCCC Representative. All such Work shall be in accordance with approved submittals and the Contract Documents.

**ARTICLE 51. Detail Drawings, Interpretations and Instructions**

- A. Design Professional and LCCC Representative shall furnish, with reasonable promptness, additional interpretations and instructions, by means of Drawings or otherwise, necessary for the proper execution of the Work. All such Drawings, interpretations and instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith and CMAR shall do no Work without proper Drawings and, if needed, additional interpretation or instructions.
- B. CMAR and Design Professional and LCCC Representative, if any so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail Drawings will be required. CMAR shall prepare a schedule fixing the dates for the submission of Shop Drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the Work.

**ARTICLE 52. Copies Furnished.** LCCC shall furnish CMAR, with reasonable promptness, electronic versions of all drawings.

**ARTICLE 53. Shop Drawings and Schedules**

- A. CMAR shall review, approve and submit, with such promptness and in such sequence as to cause no delay in its Work or in that of any other contractor, all shop or setting drawings, schedules, samples, product data, templates and models as required. Design Professional shall review them with reasonable promptness. CMAR shall make any corrections required by Design Professional, file with it one (1) transparency, and furnish such other copies as may be needed. Design Professional's review of such drawings, samples, models or schedules shall not relieve CMAR from responsibility for deviations from the Contract Documents, unless it has in writing called Design Professional's attention to such deviation(s) at the time of submission, and Design Professional has, in writing, approved such deviation(s). CMAR shall not be relieved from responsibility for errors or omissions in the shop drawings, product data, samples, models or schedules by Design Professional's review.
- B. By approving and submitting shop drawings, product data, samples, models and schedules, CMAR represents that it has determined and verified all materials, field

measurements, and field construction criteria related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.

C. Prior to final payment, CMAR shall forward all shop drawings to Design Professional for delivery to LCCC.

D. CMAR shall provide the following schedules:

- (i) CMAR shall submit a schedule to the Design Professional and LCCC Representative for review, within twenty (20) days after award of the Construction Contract, showing the order in which CMAR proposes to carry on the Work, the dates on which it will start the several major features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a graphic network diagram or progress chart indicating the work scheduled for accomplishment at any time. The schedule shall not exceed the time limits current under the Contract Documents. Unless otherwise specified, CMAR shall enter on the schedule the actual progress at monthly intervals and shall immediately deliver the updated schedule to Design Professional and LCCC Representative.
- (ii) If CMAR fails to submit the progress schedule within the time prescribed, or the updated monthly schedule within the requested time, Design Professional and LCCC Representative may withhold approval of progress payment applications until such time as CMAR submits the required progress schedules.
- (iii) If, in the opinion of LCCC, CMAR falls significantly behind the approved progress schedule, CMAR shall take any and all steps necessary to improve its progress. LCCC, in this instance, may require CMAR to do any or all of the following: increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction personnel. LCCC may also require CMAR to submit for approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the approved schedule, all without additional cost to LCCC.
- (iv) Failure of CMAR to comply with the requirements of Design Professional and LCCC Representative under this provision shall be grounds for determination by Design Professional and LCCC Representative that CMAR is not prosecuting the Work with such diligence as will insure completion of the Work within the time specified. Upon such determination, LCCC may invoke the remedies specified in Articles 44, 45 or 46.

**ARTICLE 54. Documents and Samples Required at the Site.** CMAR shall maintain at the site one record copy of all Drawings and Specifications, addenda, change orders and extra work orders, in good condition and marked currently to record all changes made during construction.

Additionally, CMAR shall keep and maintain at the site approved shop drawings, schedules, product data and samples. All documents and samples required to be kept at the site shall be available for review and inspection by Design Professional and LCCC or their representatives, monthly, or as needed. Upon completion of the Work, these shall be delivered to Design Professional and LCCC Representative for their final review and submission to LCCC.

**ARTICLE 55. Ownership of Drawings and Models.** All Drawings, Specifications and copies thereof furnished to CMAR are the property of LCCC. They are not to be used by CMAR on other work and with the exception of the executed Contract set, and the record set are to be returned to LCCC at the completion of the Work. All models are the property of LCCC.

**ARTICLE 56. Samples.** CMAR shall furnish for approval all samples as directed. Samples are the property of LCCC.

## **SECTION G. MATERIALS, EQUIPMENT AND INSPECTIONS**

### **ARTICLE 57. Materials and Equipment Furnished**

- A.** CMAR warrants to LCCC that all material and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized by Design Professional and LCCC Representative, may be considered defective and unacceptable. CMAR shall replace all such defective and unacceptable materials and equipment at CMAR's expense. Such warranty does not extend to damage or defect caused by abuse or modifications not executed by CMAR, improper or insufficient maintenance, or improper operation by Owner. CMAR shall, if required, furnish satisfactory evidence as to the kind and quality of materials and equipment.
- B.** Approval by Design Professional and LCCC Representative of a substitute proposed by CMAR for a specified method, material, or equipment shall not relieve CMAR of the responsibility for full compliance with Drawings and Specifications and for adequacy of the substituted method, material or equipment. CMAR shall also be responsible for the resultant changes which the substitution requires in its Work, the Work of its subcontractors and the Work of other contractors and shall effect such changes without cost to LCCC.

### **ARTICLE 58. Inspection of Work**

- A.** LCCC, Design Professional and LCCC Representative and their representatives shall, at all times, have access to the Work wherever it is in preparation or progress, and CMAR shall provide safe and proper facilities for such access and for inspection. Nothing contained in this Article shall restrict LCCC's rights under any warranty or guarantee.

- B. If law, ordinance or public authority, or the Contract Documents, require any Work to be tested or approved, CMAR shall give the Design Professional and LCCC Representative timely notice of its readiness for inspection or testing, and if the inspection or testing is by authority other than Design Professional and LCCC Representative, or is at a location other than the Project, of the date fixed for such inspection. If any such Work should be covered up without approval or consent of Design Professional and LCCC Representative, it must, if required by Design Professional and LCCC Representative, be uncovered for examination, testing or approval, at CMAR's expense. CMAR shall bear all costs of inspections, tests or approvals ordered by any authority other than Design Professional and LCCC Representative.

**ARTICLE 59.** Labor, Materials, Equipment, Services and Facilities. It is understood that except as otherwise specifically stated in the Contract Documents, CMAR shall provide and pay for all labor, materials, equipment, tools, construction equipment, machinery, transportation, water, heat, light, facilities, and services necessary for the proper execution and completion of the Work, whether temporary or permanent, which are necessary to execute, complete and deliver the Work within the specified time.

## **SECTION H. INSURANCE, BONDS AND LIABILITY**

### **ARTICLE 60.** Payment and Performance Bonds

- A. Upon execution of this Contract, CMAR shall furnish to LCCC a bond in the amount of the Contract Sum, guaranteeing the faithful performance of the Contract, and a bond in the amount of the Contract Sum, guaranteeing the payment of claims of mechanics, materialmen, and others, said bonds to be in substantially the forms required by the LCCC and with sureties approved by LCCC. The premiums for all such bonds shall be paid by CMAR. Upon demand and at its cost, CMAR shall promptly furnish such additional security as may be required by LCCC from time to time to protect its interests and those of persons supplying labor or materials in the prosecution of the Work required by this Contract.
- B. If, during the Contract, change orders or other modifications increase the original Contract Sum, CMAR shall furnish to LCCC, as required by Wyo. Stat. § 9-2-1016(b)(xviii), as amended, additional bonding coverage so that a bond of one hundred percent (100%) of the Contract amount is always provided.

### **ARTICLE 61.** CMAR's Insurance

- A. CMAR shall not commence Work under this Contract until it has obtained all the insurance required by LCCC and such insurance has been approved by LCCC. Approval of insurance by LCCC shall not relieve or decrease the liability of CMAR. CMAR shall file a Certificate of Insurance with LCCC verifying each type of

coverage required by this Article, and CMAR's insurance certificates must be furnished or countersigned by a resident agent authorized to do business in the State of Wyoming. The insurance requirements indicated herein, where inconsistent with the insurance requirements found in the bid materials, are supplementary and are not intended to replace the requirements of the bid.

- B. Workers' Compensation and Employer's Liability Insurance:** Workers' Compensation insurance or its' equivalent (including Occupational Disease coverage) as required by law for all employees, agents, and subcontractors. Employer's Liability Insurance (including Occupational Disease coverage) in the amount of \$1,000,000.00 per accident. Such insurance shall provide coverage in the location in which the work is performed and the location in which the Contractor is domiciled. The Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws of the state(s) or country wherein said work is being performed.
- C. General Liability Insurance:** Commercial General Liability insurance covering all operations by or on behalf of Contractor against claims for bodily injury (including mental injury, mental anguish, and death) and property damage (including loss of use). The Commercial General Liability policy will include limits as follows:
- |  |                |
|--|----------------|
| General Aggregate                      | \$2,000,000.00 |
| Products and Completed Operations      | \$1,000,000.00 |
| Personal Injury and Advertising Injury | \$1,000,000.00 |
| Each Occurrence                        | \$1,000,000.00 |
| Damage to Premises Rented              | \$100,000.00   |
| Medical Expense                        | \$5,000.00     |
- D.** If the policy is written on a claims-made basis, the Contractor will include an automatic extended reporting period of at least five (5) years past the expiration date of the policy.
- E. Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned, rented, leased, non-owned, and hired vehicles used in the performance of the Work, with a minimum limit of \$1,000,000.00 per accident for bodily injury and property damage combined and containing appropriate uninsured motorist and No-Fault insurance provision wherever applicable.
- F. Excess Insurance:** Excess (or Umbrella) Liability insurance with a minimum limit of \$2,000,000.00 per occurrence/\$2,000,000.00 annual aggregate. This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections a, b, and c. This insurance shall be written on a following form basis of underlying coverage, and the aggregate limits, if any, shall apply separately to each annual policy period. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended period of at least five (5) years.

**G. Policy Requirements**

- (i) Certificate Proof: Prior to the commencement of the respective Contract and/or Agreement, the successful Contractor shall deliver certificates of insurance evidencing such policy or policies to the LCCC Director of Procurement and Contracting specific “Certification” proof shall include:
  - (a) Certificate of Liability insurance form.
  - (b) State of Wyoming, Department of Employment “Unemployment Insurance Certificate of Good Standing”.
  - (c) State of Wyoming, Department of Employment “Workers’ Compensation Certificate of Good Standing”.
  - (d) Additional Insured Clause: LCCC shall be listed as the “Additional Insured” on all policies, but only with respect to operations of successful firm under the respective Contract.

**H. Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be canceled or non-renewed expect after thirty (30) days prior written notice has been given to LCCC, expect when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to LCCC, Director of Procurement and Contracting.

**I. LCCC's Right to Reject.** LCCC reserves the right to reject a certificate of insurance if CMAR's insurance company is widely regarded in the insurance industry as financially unstable.

**J. Subcontractors.** CMAR shall ensure that its subcontractors hold insurance during the project. LCCC may review the certificates of any and all subcontractors used by CMAR.

**K. Increased Hazards.** LCCC may increase the required minimum limit of liability required under this Contract as warranted by an increase in hazard. Increased hazards include, but are not limited to:

- (i) the handling of hazardous materials;
- (ii) activities involving large congregations of people; or
- (iii) an increase in the Contract Sum in excess of twenty percent (20%).

**L. LCCC's Right to Contact Insurer.** The LCCC and the State shall have the right to consult with the CMAR’s insurance agent for disclosure of relevant policy information. Relevant information includes, but is not limited to, exclusions and claims in progress which could significantly reduce the annual aggregate limit. If the

policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but not necessarily be limited to: retroactive dates, extended reporting periods or tails and any applicable deductibles.

## **SECTION I. LABOR AND RECORDS**

### **ARTICLE 62. Employees**

- A.** CMAR shall not employ on the work any unfit person or anyone not skilled in the work assigned to it.
- B.** Should Design Professional, LCCC Representative deem anyone employed on the Project incompetent or unfit for his/her duties, and so inform CMAR, CMAR shall take appropriate action.

**ARTICLE 63. Payroll Records.** CMAR, and each subcontractor under it, shall follow Wyo. Stat. § 27-4-410 and keep, or cause to be kept, an accurate payroll record, showing the name, address, Social Security number and classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee employed in connection with the construction and installation Work. The payroll record shall be certified and shall be available for inspection by the Wyoming Department of Workforce Services or LCCC at all reasonable hours at the principal office of CMAR. Copies of payroll records shall be furnished to the Wyoming Department of Workforce Services or LCCC, at its request. LCCC shall reimburse CMAR for the cost of reproduction.

## **SECTION J. DELAYS AND CHANGES**

### **ARTICLE 64. Delays**

- A.** If CMAR is delayed at any time in the progress of the Work as a direct result of the negligence of LCCC or Design Professional, or of their employees or agents, or by strikes, boycotts, or like obstructive action by employees or labor organizations, which acts are not caused by or the continuance of which is not caused by any act or conduct of CMAR, the length of such delay shall be added to the time for the completion of Work called for by the Contract, provided, however, that CMAR must submit a request for an extension of time as provided in this Article.
- B.** Any request for an extension of time shall be made by CMAR in writing to Design Professional and LCCC Representative within ten (10) days after the occurrence which causes the delay; otherwise it shall be waived. Any request for extension of time shall provide an estimate of the additional time needed, and extensions of Contract Time shall be made only by change order.

The parties agree that a waiver of any Article 64 requirement shall not constitute a waiver by LCCC of any such requirement(s) in connection with any other, present or

future, delays. CMAR understands and agrees that no verbal approval, either express or implied, of time extension by LCCC or its agents shall be binding upon LCCC, unless and until such approval is expressly ratified in writing by LCCC.

- C. If, in the opinion of Design Professional or LCCC Representative, CMAR is not proceeding with the prosecution of the Work as scheduled, LCCC may avail itself of remedies including but not limited to those referenced in Article 53d(iii).

## **ARTICLE 65. Changes in the Work**

### **A. Changes.**

- (i) Changes in the Work may be made after execution of the Contract, and without invalidating the Contract, by change order, construction change directive or order for a minor change in the Work, subject to limitations stated in this Article and elsewhere in the Contract.
- (ii) A change order shall be based upon agreement among CMAR, Design Professional and LCCC Representative. A construction change directive requires agreement by Design Professional and LCCC Representative and may or may not be agreed to by CMAR. An order for a minor change, as defined in Article 67, in the Work may be issued by Design Professional and LCCC Representative. Orders issued under this Article may change the Work, the Contract Time or the Contract Sum, consistent with the requirements of this Article. A change order, construction change directive or an order for a minor change in the Work may not amend any other terms of the Contract, including, but not limited to, LCCC's retention of their sovereign immunity.
- (iii) Any work ordered pursuant to a change order, a construction change directive or an order for a minor change in the Work shall be performed in accordance with the Contract requirements.
- (iv) CMAR SHALL NOT CHANGE THE WORK OR DEVIATE FROM THE WORK AS DESCRIBED IN THE CONTRACT WITHOUT WRITTEN AUTHORIZATION IN THE FORM OF A CHANGE ORDER, CONSTRUCTION CHANGE DIRECTIVE OR ORDER FOR MINOR CHANGE IN THE WORK.
- (v) CMAR shall not be entitled to an increase in Contract Sum or an extension of the Contract Time for additional work or changes in the Work which should have been included in the GMP. Work which should have been included in the GMP is work which is foreseeable following examination of the Project site and review of the Contract Documents, as required by this Contract.

### **B. Change Orders.**

- (i) A change order is a written instrument prepared by the Design Professional or LCCC Representative and/or CMAR, stating their agreement upon the following:
  - (a) a change in the Work;
  - (b) the adjustment in the Contract Sum, if any; and
  - (c) the adjustment in the Contract Time, if any.
- (ii) Methods used in determining adjustments to the Contract Sum may include those listed in Article 65(c)(iii).
- (iii) Any request from CMAR for a change order shall be in writing, signed and provided to Design Professional and LCCC. It shall include the reasons for the request and the change in the Contract Sum or Contract Time requested. A request for a change order must be made within ten (10) days after the reason for the request is discovered. FAILURE TO FILE A REQUEST FOR A CHANGE ORDER WITHIN TEN (10) DAYS CONSTITUTES A WAIVER OF ANY FUTURE CLAIM.
- (iv) ANY CHANGE OR DEVIATION FROM THE CONTRACT WITHOUT WRITTEN AUTHORIZATION WILL BE AT CMAR'S OWN RISK FOR WHICH NO PAYMENT, UNDER QUANTUM MERUIT OR OTHERWISE, SHALL BE MADE.
- (v) Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of: (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work; and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- (vi) Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.

- (vii) No Markup on Bonds and Liability Insurance Costs: Change Order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.
- (viii) Direct and Indirect Costs Covered by Markup Percentages: As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the CMAR's/subcontractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than seven hundred fifty dollars (\$750.00).
- (ix) Deduct Change Orders and Net Deduct Changes: The application of the markup percentages referenced in the preceding paragraphs (v) and (vi) will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs (v) and (vi) so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.

**C. Construction Change Directives.**

- (i) A construction change directive is a written order prepared by the Design Professional or LCCC directing a change in the Work and stating a proposed adjustment, if any, in the Contract Sum or Contract Time, or both. LCCC may by construction change directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions.
- (ii) A construction change directive shall be used in the absence of total agreement on the terms of a change order.
- (iii) If the construction change directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
  - (a) mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;

- (b) unit prices stated in the Contract Documents or subsequently agreed upon;
  - (c) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee of Ten Percent ( 10% ) of change order costs;
  - (d) as provided in Article 65(c)(vi).
- (iv) Upon receipt of a construction change directive, CMAR shall promptly proceed with the change in the Work involved and advise Design Professional of CMAR's agreement or disagreement with the method, if any, provided in the construction change directive for determining the proposed adjustment in the Contract Sum or the Contract Time.
- (v) A construction change directive signed by CMAR indicates CMAR's agreement therewith, including any adjustment in the Contract Sum or Contract Time and of the method for determining them. Such agreement shall be effective immediately and shall be recorded as a change order.
- (vi) If CMAR does not respond within seven (7) days or disagrees with the method of adjustment in the Contract Sum, Design Professional and LCCC Representative shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change. In such case, and also under Article 65(c)(iii), CMAR shall keep and present, in such form as Design Professional and LCCC Representative may prescribe, an itemized accounting together with appropriate supporting data. The costs for the purposes of this Article 65(c)(vi) shall be limited to the following:
- (a) costs of labor, including social security, unemployment insurance, reasonable fringe benefits, and workers' compensation insurance;
  - (b) costs of materials, supplies and equipment, including costs of transportation;
  - (c) rental costs of machinery and equipment, exclusive of hand tools;
  - (d) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes attributable to the change in Work; and
  - (e) additional cost of supervision and field office personnel directly attributable to the change in Work.

- (vii) Pending final determination of cost to LCCC, amounts not in dispute may be included in applications for payment. For a deletion or change, which results in a net decrease in the Contract Sum, LCCC shall be allowed a credit equal to the actual net cost as confirmed by Design Professional and LCCC Representative.
- (viii) Amendments in the time required for performance of the Contract to allow completion of Work covered by change orders shall be made by one of the following:
  - (a) The time extension or reduction agreed upon by LCCC and CMAR.
  - (b) If the parties are unable to agree on the time extension or reduction, Design Professional and LCCC Representative shall make a determination of the time extension or reduction to be allowed for a change in accordance with Article 26.
- (ix) When LCCC and CMAR agree with Design Professional and LCCC Representative's determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement on the adjustments, such agreement shall be effective immediately and shall be recorded by a change order.

**ARTICLE 66. Claims for Extras.** If CMAR claims that any instruction or interpretation, by drawings or otherwise, involves extra cost under this Contract, it shall give Design Professional and LCCC Representative written notice thereof, with proper itemization and supported by sufficient substantiating data, to permit approval before proceeding to execute the Work, and, in any event, within ten (10) days of receiving such instructions. No such claim shall be entitled to consideration unless so made. No claim by CMAR shall be entitled to consideration if asserted after final payment under this Contract.

**ARTICLE 67. Minor Changes.** Design Professional and LCCC Representative shall have authority to make minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, and not inconsistent with the intent of the Contract. Such changes shall be made by written order and shall be binding on LCCC and CMAR. CMAR shall carry out such written orders promptly.

## **SECTION K. PAYMENT PROVISIONS**

**ARTICLE 68. Cost Breakdown.** Immediately upon execution of the Contract, CMAR shall submit to Design Professional and LCCC Representative a breakdown of cost of the GMP.

**ARTICLE 69. Application for Payments.** CMAR shall submit to Design Professional and LCCC Representative an application for each payment.

- A. CMAR shall submit the following written certification with its application for payment:

"For all amounts billed and paid up to the date of this payment application, no known claims for unpaid material, labor or equipment are outstanding. There is no known basis for the filing of any claims on the Work for which applications for payment have been made to date, or for the filing of any claims for unpaid bills for labor, material or equipment on such work. CMAR has obtained from all subcontractors and materialmen waivers in such form as to constitute an effective waiver of lien or claim under the laws of Wyoming."

- B. CMAR shall, within ten (10) days after receipt of notice of the existence of any lien or claim for unpaid labor, material or equipment, filed against the Project by any subcontractor, supplier of materials or any other person or entity claiming to be a creditor of CMAR, cause the same to be removed of record or bonded, at CMAR's sole cost and expense. Any payment due CMAR hereunder shall be reduced by an amount up to two hundred percent (200%) of the amount of any claim arising out of or related to CMAR's performance under this Contract until such claim is removed as of record or bonded.

**ARTICLE 70. Certificates for Payments and Payments**

- A. Design Professional and LCCC Representative shall, within five (5) days after receipt of CMAR's application for payment, issue to LCCC, with a copy to CMAR, a certificate for such amount as Design Professional and LCCC Representative determines to be properly due, or notify LCCC and CMAR in writing of Design Professional and LCCC Representative's reasons for withholding certification in whole or in part, as provided by Article 71.
- B. LCCC shall make all undisputed payments provided for in Design Professional and LCCC Representative certificate for payment within forty-five (45) days after receipt of the certificate for payment. The making of progress payments shall not constitute LCCC's acceptance of the whole or any part of the Work done. The entire Work is subject to Design Professional and LCCC Representative's inspection and approval when CMAR claims that the Work under the Contract is completed.
- C. If Design Professional and LCCC Representative do not issue a certificate for payment, through no fault of CMAR, within seven (7) days after receipt of CMAR's application for payment, or if LCCC does not pay CMAR within forty-five (45) days the amount certified by Design Professional and LCCC Representative, then CMAR may, upon seven (7) additional days' written notice to Design Professional and LCCC Representative, stop the work until the payment is received. The Contract Time shall be extended as necessary and the Contract Sum shall be increased, as agreed by the Parties, for CMAR's reasonable costs of shut-down, delay and start-up. This

provision shall not apply to disputed payments referred to Design Professional and LCCC Representative for resolution pursuant to Articles 77 through 79.

- D. Based upon CMAR's applications for payment and the Design Professional's certification, LCCC shall make to CMAR progress payments proportionate to the GMP, as established by the Contract between LCCC and CMAR, for the period ending the last day of each month during the performance of this Contract. Progress payments shall be computed as follows: ninety percent (90%) of the portion of the Contract Sum properly attributable to labor, materials and equipment incorporated in the Work as of the last day of the month covered by CMAR's application for payment, after deducting therefrom the aggregate of all previous payments made by LCCC. In accordance with Wyo. Stat. §§ 16-6-701 through 16-6-706, with the approval of CMAR's sureties, LCCC may, in its sole discretion, at any time after fifty percent (50%) of the Work has been completed and LCCC finds that satisfactory progress is being made, make any of the remaining progress payments in full.
- E. In determining the right to a progress payment, Design Professional and LCCC Representative may consider the invoiced value of acceptable materials delivered to the site but not yet incorporated in the Work. If CMAR wishes LCCC to consider the value of acceptable delivered materials for purposes of establishing the amount of a progress payment, CMAR shall furnish evidence satisfactory to LCCC showing: (1) the value of such materials; and (2) that such materials are under the exclusive control of CMAR. Only materials to be incorporated in the structure will be considered for purposes of partial payment under this paragraph. Partial payment shall not be construed as acceptance of such materials, nor relieve CMAR from sole responsibility for the care and protection of such materials, nor relieve CMAR from risk of loss to such materials from any cause including, but not limited to: theft, casualty, act of God, vandalism or levy by creditors; nor shall it be considered as a waiver of the right of LCCC to require fulfillment of all terms of the Contract.
- F. Should LCCC make progress payment for the invoice value of acceptable materials delivered to the site but not yet incorporated in the Work, ownership of all equipment and materials shall pass to LCCC upon payment therefor or incorporation in the Work, whichever shall first occur, and CMAR shall prepare and execute all documents necessary to effect and perfect such transfer of ownership.

#### **ARTICLE 71. Payments Withheld**

- A. Design Professional and LCCC Representative may decline to certify, or on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect LCCC from loss on account of:
  - (i) defective Work not remedied;

- (ii) third party claims filed or reasonable evidence indicating probable filing of such claims;
  - (iii) CMAR's failure to make payments to subcontractors, or failure to make payment for material, labor or equipment;
  - (iv) a reasonable belief that the Contract can be completed for the unpaid balance of the Contract Sum, or within the Contract Time;
  - (v) damage to LCCC or another contractor; or
  - (vi) CMAR's default in the performance of the Contract.
- B.** Any subcontractor, materialman, or workman, or anyone else having any claim against CMAR for, or on account of, Work done or material furnished for the performance of the Work provided for hereunder, may, at any time before final completion, give notice of said claim and the amount thereof to LCCC. LCCC may, but shall not be obligated to, withhold any and all payments due or to become due thereafter to CMAR until said claims are resolved. The provisions of this Article shall not lessen or diminish, but shall be in addition to, the right or duty of LCCC to withhold any payments under the provisions of the laws of the State of Wyoming respecting the withholding of sums due to CMAR upon final payment, as provided by Wyo. Stat. §§16-6-116, 16-6-117 and 16-6-702.

**ARTICLE 72. Releases and Claim Waivers**

- A.** CMAR agrees that at any time upon request of Design Professional and LCCC Representative, it will submit a sworn statement setting forth the Work performed or material furnished by subcontractors and materialmen, and the amount due and to become due to each, and that before the Final Payment called for hereunder it will, if requested, submit to Design Professional and LCCC Representative a complete set of vouchers showing what payments have been made for materials and labor used in connection with the Work called for hereunder to the extent of payments received.
- B.** Neither the final payment nor any part of the retained percentages shall become due until CMAR, if required, shall deliver to LCCC a complete release of all claims asserted against CMAR and arising out of this Contract, or receipts in full, in lieu thereof, in such form as LCCC may require, and if required in either case, a sworn affidavit that so far as CMAR has knowledge or information such releases and receipts include all the labor and material for which a claim could be filed to the extent of payments received.
- C.** The provisions of this Article shall not lessen or diminish, but shall be in addition to, the duty of CMAR to submit to LCCC a sworn statement setting forth that all claims for materials and labor performed under the Contract have been made and are paid for

the entire period of time for which the final payment is to be made and, with respect to disputed claims, to identify such and the amount claimed to be due. Final payment will be made only in conjunction with Wyo. Stat. §§ 16-6-116 and 16-6-117.

## **SECTION L. COMPLETION AND OCCUPANCY**

### **ARTICLE 73. Substantial Completion**

- A.** Substantial completion is the time when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract so LCCC can occupy or use the Work for its intended purpose.
- B.** When CMAR believes that the Work, or a portion thereof which LCCC agrees to accept separately, is substantially complete, CMAR shall prepare and submit to Design Professional and LCCC Representative a comprehensive list of items to be completed or corrected. CMAR 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 CMAR to complete all Work in accordance with the Contract Documents. Upon receipt of CMAR's list, Design Professional and LCCC Representative shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Design Professional's and LCCC Representative's inspection discloses any item(s), whether or not included on CMAR's list, which is not in accordance with the requirements of the Contract, CMAR shall, before issuance of the certificate of substantial completion, complete or correct such item(s) upon notification by Design Professional and LCCC Representative. CMAR shall then submit a request for another inspection by Design Professional and LCCC Representative to determine substantial completion. When the Work or designated portion thereof is substantially complete, Design Professional and/or LCCC Representative will prepare a certificate of substantial completion which shall establish the date of substantial completion, shall outline responsibilities of LCCC and CMAR for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which CMAR shall finish all items on the list accompanying the certificate.

**ARTICLE 74. Occupancy as of Substantial Completion.** LCCC may, at its sole discretion, occupy the premises as of the date of substantial completion. Occupancy shall be subject to the following conditions:

- A.** Occupancy or use shall not constitute acceptance by LCCC either of the completed Work or any portion thereof, nor shall it relieve CMAR from full responsibility for correcting defective Work or materials found before final completion and acceptance of all the Work or during the warranty period specified in Article 49.
- B.** CMAR shall not be required to repair damaged premises if the same was caused by LCCC's occupancy or use.

- C. The period of any special warranties required by the Contract Documents for equipment shall start as of the date of occupancy or use by LCCC.

**ARTICLE 75. Occupancy Before Substantial Completion.** LCCC reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the project premises at any time before substantial completion, upon ten (10) days written notice to CMAR. Occupancy shall be subject to the following conditions:

- A. LCCC shall use its best efforts to prevent its occupancy from interfering with the conduct of CMAR's remaining Work.
- B. CMAR shall not be required to repair damaged premises if the same was caused by LCCC's occupancy or use.
- C. The warranty period for those portions of the premises occupied and equipment utilized by LCCC shall start as of the date of actual occupancy or use by LCCC.
- D. Occupancy or use shall not constitute acceptance by LCCC as to either the completed Work or any portion thereof, nor shall it relieve CMAR from full responsibility for correcting defective Work or materials found before final completion and acceptance of all the Work or during the warranty period(s) specified in Article 50.
- E. Effective 12:01 A.M., Mountain Standard Time or Mountain Daylight Savings Time, whichever is in effect on the date of occupancy, CMAR shall be released from its obligations of maintaining fire and extended coverage insurance for those portions of the premises occupied by LCCC pursuant to this Article. CMAR shall maintain all other insurance required by the Contract.

**ARTICLE 76. Final Completion.** When CMAR has completed all punch list work and believes the Work to have been fully and finally completed in accordance with the Contract Documents, it shall so notify Design Professional and LCCC Representative who will inspect the Work and, if they concur, will so notify LCCC. When LCCC notifies Design Professional and CMAR of its acceptance of the Project, CMAR's site responsibilities and duties shall cease, required insurance policies may, unless otherwise required by the Contract Documents, be canceled, and utilities and security shall become the responsibility of LCCC, if LCCC has not already assumed such responsibility by occupying the premises. Nothing herein shall be construed as terminating CMAR's responsibilities and duties under Article 49.

## **SECTION M. DISPUTE RESOLUTION PROCEDURE**

**ARTICLE 77. Sovereign Immunity.** In seeking to resolve any issue or dispute, LCCC does not waive sovereign immunity and specifically retain all immunities and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.

**ARTICLE 78. Procedure.**

- A. The parties shall attempt to resolve any issues or concerns arising from or relating to the Contract Documents through consultation and negotiation in good faith and a spirit of mutual cooperation. Issues or concerns shall first be brought to the attention of the LCCC Project Representative, who shall gather information and attempt to resolve the issue.
- B. No Mandatory Arbitration: Notwithstanding anything to the contrary in the Contract Documents, there shall be no mandatory arbitration for any dispute arising hereunder.
- C. The parties may by mutual agreement endeavor to settle disputes by non-binding mediation. A request for mediation shall be filed in writing with the other party to this Contract. Any demand for mediation shall be made within thirty (30) days after occurrence of the event giving rise to the dispute or within thirty (30) days after CMAR discovers the condition giving rise to the dispute, whichever is later.

**ARTICLE 79. LCCC Remedies and Liquidated Damages.**

- A. Nothing in Articles 77 through 79 is intended to limit LCCC's remedies against CMAR for CMAR's breach of this Contract.
- B. CMAR shall pay to LCCC as compensatory and/or liquidated damages the sum of one thousand dollars (\$2,500.00) for each calendar day of delay until the Work is completed or accepted, or and in addition to any other substantiated financial impacts that LCCC may incur as a result of delayed construction completion.
  - i.) The liquidated damages shall be computed beginning the day following the first working day specified for completion and shall continue each and every calendar day until all Work under the Contract is performed to the satisfaction of LCCC.
  - ii.) Liquidated damages will not be charged for any Work required to be done by CMAR as a result of a final inspection, providing the Work is only cleanup or of a minor nature and CMAR has shown constant effort in completing the Work, as determined by LCCC Project Manager. If deferment of the inspection is necessary due to causes which LCCC, in its sole discretion, determines to be beyond the control of and without the fault or negligence of CMAR, liquidated damages will not be assessed for that period of time.

**END OF SUPPLEMENTAL GENERAL PROVISIONS**