

**SUPPLEMENTAL AGREEMENT NO. 1
TO CONSTRUCTION MANAGER-AT-RISK CONTRACT
WITH _____**

THIS SUPPLEMENTAL AGREEMENT NO. 1, dated and entered into this ____ day of _____, 202_, is by and between the **CITY OF MESQUITE**, a municipal corporation of Dallas County, Texas (hereinafter called "Owner"), and _____, a Texas corporation, with offices located at _____ (hereinafter called "CMaR").

WITNESSETH:

WHEREAS, Owner intends to construct an addition and remodel on the Service Center Field Services Building pursuant to RFP No. 2023-XXX (the "Project"), in the City of Mesquite, County of Dallas, Texas, which Project will be built according to the Drawings and Specifications prepared by WRA Architects [ARCHITECT] (hereinafter called "Architect"); and

WHEREAS, the City Council of the City of Mesquite on _____, 202_, authorized the City Manager to enter into a contract (the "original Contract") with _____, for Design Consultation Services (Phase I services) on the Project, which original Contract, including Exhibits 1 and 2, was executed by Owner and CMaR on _____, 202_; and

WHEREAS, pursuant to the original Contract, CMaR has provided professional services to both Owner and Architect in development of Drawings, Specifications, schedules, and budgets for the Project, and developed and submitted to Owner a Guaranteed Maximum Price ("GMP") not to exceed \$ _____, representing (1) all construction contract costs necessary for completion of the Project in accordance with the Contract Documents enumerated in Exhibit 1; and (2) all CMaR compensation, including Fee and Reimbursable Expenses, which GMP is attached to and made a part of this Supplemental Agreement No. 1 as Exhibit 3; and

WHEREAS, in accordance with Section 2.3 of the original Contract, Owner now desires to supplement the original Contract with CMaR by adding to CMaR's Scope of Work the Construction Phase services (Phase II) hereinafter identified, including construction of the Project, in accordance with the terms and conditions of this Supplemental Agreement No. 1 to the original Contract; and

WHEREAS, CMaR understands that time is of the essence, and has agreed to undertake all efforts to expedite the performance of the Work, as redefined and set out in this Supplemental Agreement No. 1, so that construction of the Project will commence by _____, 2023, and be substantially completed on or before _____; and

WHEREAS, CMaR understands that Owner has established the GMP as the fixed limit of total budgeted construction cost for the Project (\$ _____), which GMP represents the not-to-exceed sum of all construction contract costs necessary for completion of the Work and all

CMaR's compensation, including Fee and Reimbursable Expenses, and constitutes the Owner's absolute limit of liability to CMaR under the original Contract, as herein supplemented, for the full completion of the Work, including construction of the Project (as the GMP may be adjusted by change orders or other supplemental agreements signed by the parties);

NOW, THEREFORE, Owner and CMaR, in consideration of the foregoing, and the terms and conditions contained in this Supplemental Agreement No. 1, agree to supplement the original Contract as follows:

ARTICLE 1 SCOPE OF THE CMaR'S WORK

- 1.1 Continuation of Design Phase Services. CMaR shall continue performance of all Design Phase (Phase I) services in accordance with the terms of the original Contract.
- 1.2 Construction Phase Services. Pursuant to Section 2.3 of CMaR's original Contract, and subject to the terms and provisions of the original Contract, the scope of the CMaR's Work is hereby supplemented to include all Construction Phase services ("Phase II"), as specified below, including construction of the Project. CMaR shall immediately commence and fully complete all Phase II Work to the extent necessary to achieve completion of the Project within the time and budget limits stated above. **THE CONTRACT DOCUMENTS, INCLUDING BUT NOT LIMITED TO OWNER'S GENERAL CONDITIONS FOR BUILDING CONSTRUCTION (THE "GENERAL CONDITIONS"), AS MAY BE MODIFIED BY SPECIAL PROVISION, APPLY TO ALL PHASE II SERVICES OF MANAGER UNDER THIS SUPPLEMENTAL AGREEMENT NO. 1.**
- 1.3 The Phase II Work shall be substantially completed on or before _____. Substantial Completion of the Project must be within the time and cost constraints hereinabove specified, or as subsequently revised by supplemental agreement of Owner and CMaR. CMaR agrees to accomplish the Phase II Work within the time required, and represents to Owner that the date of Substantial Completion is attainable, understanding that Owner is executing this Supplemental Agreement No. 1 to the original Contract in reliance upon the representations of Manager as to the time of Substantial Completion.
- 1.4 As amended by this Supplemental Agreement No. 1, all of the terms and provisions of the original Contract between the Parties hereto, including but not limited to Articles 1-15 of said original Contract, shall apply to the CMaR's Work as redefined in this Supplemental Agreement No. 1. The term "Contract," as used from this point on in this Supplemental Agreement No. 1, shall mean, unless otherwise indicated, the original Contract and this Supplemental Agreement No. 1 thereto. If a conflict exists between the terms of the two documents, the terms of this Supplemental Agreement No. 1 shall be controlling, and both documents shall be construed together as a single contractual agreement.
- 1.5 In accordance with the agreed schedule, all trade construction subcontracts awarded on the Project shall be publicly advertised for competitive bids pursuant to Section 2269.255 of the Texas Government Code, as amended, and awarded by CMaR with the concurrence of

Owner. Manager will then act in a dual capacity of providing continuing construction management and construction supervisory services, the successful bidders in each instance in turn constituting Subcontractors in privity only with Manager. Manager accepts the responsibility of bidding and awarding the trade construction subcontracts, subject to compliance with the other provisions of this Supplemental Agreement No. 1. Owner shall look to CMaR and not to individual Subcontractors for the completion of the Project, the full responsibility for which CMaR hereby acknowledges and accepts as a part of CMaR's Phase II Work. Nothing in this Paragraph, however, shall affect the ownership of the Project, which shall remain the sole property of the City of Mesquite. By execution of this Supplemental Agreement No. 1, CMaR represents and warrants to Owner that the advertisement for bids and award of trade construction subcontracts pertaining to the Project shall comply and be consistent with the General Conditions, special provisions, if any, Instructions to Bidders, and all applicable laws of the State of Texas.

ARTICLE 2 CONSTRUCTION MANAGER-AT-RISK'S PHASE II SERVICES

- 2.1 CMaR shall continue to develop Subcontractor interest in the Project as working Plans and Specifications are fully completed. Jointly with Architect and Owner, Manager shall: (1) establish bid schedules and conduct pre-bid conferences, including on-site visits to endeavor to assure that bidders understand the various site conditions, coordination and scheduling requirements; and (2) analyze the bids in a manner that does not disclose the contents of any bid to the public during the selection process, and recommend to Owner the bids to be awarded or rejected, within ten (10) days after receipt of bids; and (3) conduct pre-award conferences with successful bidders after concurrence by Owner with CMaR's recommendations. The recommendations shall include advice on acceptability of lower-tier subcontractors and suppliers proposed by bidders, as well as proposed "or equal" product substitutions, if any. CMaR shall allow public inspection of all bids relating to each trade construction subcontract in question after award of the particular subcontract.
- 2.2 Owner agrees to perform its responsibilities so as to assist CMaR to facilitate the completion of the Work and represents to CMaR that there will be sufficient funds available to pay CMaR up to the Guaranteed Maximum Price of \$ _____ as adjusted by any Change Order. **THE GUARANTEED MAXIMUM PRICE, UNLESS CHANGED BY SUPPLEMENTAL AGREEMENT OR CHANGE ORDER, REPRESENTS THE ABSOLUTE LIMIT OF OBLIGATION OR LIABILITY THAT OWNER MAY EVER HAVE INsofar AS THE COST FOR FULL AND FINAL COMPLETION OF THE WORK, INCLUDING CONSTRUCTION OF THE PROJECT, AND THE TOTAL OF ALL PAYMENTS TO CONSTRUCTION MANAGER-AT-RISK OR ITS SUBCONTRACTORS ARE CONCERNED.** Should additional amounts be required to be expended, over and above the Guaranteed Maximum Price, to achieve completion of the Work, including Project construction, and payment to CMaR, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of CMaR and its Contract Surety herein, and Owner shall never be liable for same. Should the final Cost of the Work and CMaR's compensation total be less than the Guaranteed Maximum Price, or any approved revision thereof, the

difference shall inure to the benefit of Owner and no claim for all or any portion of said difference shall be valid against or payable by Owner. **OWNER'S LIMITATION OF OBLIGATION OR LIABILITY SET OUT IN THIS PARAGRAPH 2.2 SHALL BE INCONTROVERTIBLE AND UNEQUIVOCAL; ANY TERM OR PROVISION OF THE CONTRACT, THE EXHIBITS TO THIS CONTRACT, OR OF ANY SUBCONTRACT EXECUTED IN FURTHERANCE OF THE ANTICIPATED PROJECT CONSTRUCTION SHALL NOT BE CONSTRUED OR DEEMED TO ALTER OR WAIVE THIS ABSOLUTE CONDITION.** Likewise, CMAr's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Drawings and Specifications and within the agreed cost constraints, as well as CMAr's agreement to bear all costs in excess of the Guaranteed Maximum Price without recourse to the Owner, if the expenditure of excess costs are necessary for the completion of the Work, shall also be incontrovertible and undisputable and shall take precedence over all other terms and provisions of this Contract and the Exhibits to this Contract, no part of which other provisions shall be deemed to alter, diminish or waive the obligations stated in this Paragraph.

2.3 In addition to the Work CMAr will perform under this Phase II, it will also provide all the usual and necessary traditional construction management services, including those identified below, incident to construction projects of the nature and scope of this Project. It is understood that CMAr will be exercising a dual role during this Phase II and that many of the services provided as a part of the overall Work will overlap by their very nature. The identified Work set out below is not intended in any manner to diminish the overall responsibility of CMAr for the full and final completion of the Work, including Project construction, within the time and cost constraints specified in this Contract. The traditional construction management services referred to above generally include, but are not limited to, the following:

2.3.1 Maintain a competent, qualified, full-time staff to coordinate and provide direction of the Work and progress of the Subcontractors on the Work, so as to complete the Work in accordance with the Contract Documents.

2.3.2 Establish an on-site organization and lines of authority in order to accomplish the Work in accordance with the approved and accepted Drawings and Specifications. Prepare and submit, for Owner's review and approval, an organization chart showing staff personnel, job classifications and salaries pertaining to the Work, same to be updated periodically. Following Owner's approval of CMAr's Project Manager, such Project Manager shall not be replaced or reassigned to another project without Owner's consent. Following such consent, any replacement Project Manager must receive Owner's approval. Owner retains the right to request replacement of any employee assigned by CMAr to the Project.

2.3.3 Establish procedures for coordination among Owner, Architect, Subcontractors, and CMAr pertaining to the Work and implement such procedures. Establish emergency procedures and provide protection of the Project, equipment, machinery, tools and materials.

2.3.4 Schedule and conduct progress meetings at which Subcontractors, Owner, Architect, other design consultants (as necessary) and CMAr may discuss jointly such matters as procedures, progress, problems and scheduling.

2.3.5 Assist the Subcontractors in providing to Owner and CMAr a detailed schedule for the operations of Subcontractors on the Work, including activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead time procurement.

2.3.6 Provide regular monitoring of the Project Time Schedule as the Work progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for construction not started or incomplete and recommend to Owner and Subcontractors adjustments in the Project Time Schedule to meet the completion date. Provide summary reports of each monitoring and document all changes in the Project Time Schedule.

2.3.7 Review and evaluate the adequacy of the Subcontractors' personnel and equipment and the availability of materials and supplies to meet the Project Time Schedule. Recommend courses of action to Owner when requirements of a Subcontract are not being met. Implement such courses of action as are required. Terminate or suspend Subcontractors, as necessary, with the prior concurrence of Owner. In the event of termination of a Subcontractor, whether for cause or convenience, CMAr shall proceed as expeditiously as possible on behalf of the Construction Team and in the best interests of the Owner, subject to review and concurrence of Owner, in the following manner to secure a replacement Subcontractor:

- (a) If the CMAr obtained a performance bond from the Subcontractor and in accordance with the General Conditions and other applicable Subcontract procedures, make demand upon, consult and negotiate with the surety of a terminated Subcontractor to obtain a replacement, if the termination is the result of a default, and enter into a Subcontract with the surety-proposed replacement Subcontractor upon concurrence of Owner;
- (b) In the event of termination for convenience, in the event the surety fails or refuses to perform in a default situation, or in the event there is no performance bond, secure a rebid, as provided under the Contract, of that portion of the Work affected, if the Owner concurs with a rebid or determines that a rebid is required; or
- (c) If the Owner determines that rebidding is not required or desired under (b), negotiate and enter into a Subcontract with a replacement Subcontractor (with approval of the Owner), or perform the work with CMAr's own forces in accordance with the rules set forth in Paragraph 4.2 of this Supplemental Agreement No. 1.

2.3.8 Develop and monitor a system of cost control. Revise and refine the initially approved Project Construction Budget; incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected cost exceeds budgets or estimates.

2.3.9 Develop and implement a system for review and processing of Change Orders. Recommend necessary or desirable changes to Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and assist in negotiating Change Orders, in accordance with Paragraph 9.1.3 below.

2.3.10 Develop and implement a procedure for the review and processing of applications by Subcontractors for progress and final payments.

2.3.11 Obtain all building permits, except for barricade permits, and ensure that all Subcontractors obtain permits for inspection or temporary facilities required to be obtained directly by the various Subcontractors. Obtain approvals from all the authorities having jurisdiction.

2.3.12 If required, assist Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services.

2.3.13 Inspect the work of Subcontractors to guard Owner against defects and deficiencies, without assuming any of the Architect's responsibilities, such as and including errors and omissions in design. This inspection by CMaR during the Phase II Work shall not relieve the Subcontractors from their responsibilities for construction means, methods, techniques, sequences and procedures, nor for their responsibility to carry out the construction work in accordance with the Contract Documents.

2.3.14 Be responsible for enforcing warranties and for obtaining correction or replacement of all defective or nonconforming work not constructed or installed in accordance with the Contract Documents. All corrective or remedial work required by the Contract Documents shall be performed by the responsible Subcontractors under the terms of their Subcontracts, without additional cost to Owner.

2.3.15 Review and coordinate the safety programs of each of the Subcontractors and make appropriate recommendations to Owner. The performance of such services by CMaR shall not relieve the Subcontractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations, ordinances and orders applicable to the conduct of the Work. However, CMaR is responsible for the conduct of the Subcontractors' safety programs and for all precautions required under the safety programs.

2.3.16 Refer all questions relative to design to the Architect.

2.3.17 In collaboration with the Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples. Monitor factory inspection and testing of items fabricated outside the Project area.

2.3.18 Record the progress of the Work by submission of written progress reports to Owner and the Architect, including information on the Subcontractors' work and the percentage of completion. Maintain a detailed daily log of Project site events, which will be provided to Owner and Architect weekly.

2.3.19 Maintain at the Project site, on a current basis, records of all Subcontracts, Drawings and Specifications received from the Architect, standards, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Work. Obtain data from Subcontractors and maintain a current set of record Drawings, Plans and Specifications received from the Architect. At the completion of the Work, deliver all such records, including a full set of as-built Drawings, operating manuals and warranties received from the Architect, to Owner.

2.3.20 Secure from all Subcontractors and lower tier subcontractors prior to commencement of Work required Certificates of Insurance and, upon the request of Owner, certified copies of policies, evidencing proper insurance coverage to be in force. Maintain these certificates and policies among the Project site records and provide copies of same to Owner for Owner's records upon request.

2.3.21 Submit data for determination by the Architect of the Date of Substantial Completion of the Project or designated portions thereof and prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. Assist the Architect and Owner in conducting inspections and supervise the correction and completion of all construction work.

2.3.22 With Owner's maintenance personnel, direct the checkout of utilities, operational systems, and equipment.

2.3.23 Submit data for determination by the Architect of the Date of Final Completion and provide written notice to the Owner and Architect that the Project is ready for Final Inspection. Assign to Owner all rights acquired by CMAA in special warranties obtained from Subcontractors. Secure and transmit to the Architect required guarantees, affidavits, special warranty documentation, releases, bonds, consents of sureties, and waivers. Turn over to Owner all keys, operating equipment, maintenance stocks, maintenance manuals, parts lists, and as-built Drawings received from the Architect.

2.3.24 Conduct, with Owner and Architect, periodic post-completion inspections (not less often than quarterly) during the one-year general warranty period to ascertain the existence of defects or nonconformities in material and workmanship and determine the necessity for correction of defects or nonconformities. Assign, if possible, the causes of same, to the responsible Subcontractor, and take reasonable corrective action with the concurrence of

Owner, including but not limited to filing insurance and bond claims where coverage is available. Ultimate responsibility for correcting defects or nonconformities in material and workmanship shall rest with CMAr at no expense to the Owner.

2.3.25 Conduct with the Owner and Architect a Final Warranty Inspection within thirty (30) days of the end of the one-year general warranty period.

2.3.26 Fully and completely resolve, by litigation or otherwise, all Subcontractor claims arising out of the construction of the Project without directly involving the Owner, unless a claim results from a material breach of this Contract by the Owner. Provided, however, that the Owner reserves the right, at Owner's sole election, where the claim of a Subcontractor would necessitate a Change Order increasing the Subcontract Sum or the GMP, to approve any settlement of a Subcontractor claim proposed by CMAr and to make a reasonable audit of all books, records, accounts, and other data of the Subcontractor relating to the claim and to overall performance of the Subcontract prior to approval of any claim. CMAr shall provide for Owner's right to audit claims and other Change Order requests in its form subcontract with each Subcontractor.

ARTICLE 3 TERM

3.1 Section 13.1 of Article 13 of the original Contract is hereby amended to read as follows:

"13.1 Unless sooner terminated in accordance with the applicable provisions hereof, or extended by supplemental agreement approved by the City Manager or designee, the Term of this Contract shall be from _____, until final completion of Phase II Construction Phase Services in connection therewith, including construction of the Project, the final one-year warranty inspection, correction of defects and deficiencies in the Work, including construction work, and final resolution of any outstanding Project-related claims or disputes."

ARTICLE 4 TRADE CONTRACTS

4.1 All construction Work, other than professional and personal services that CMAr customarily performs with its own field staff, shall be performed under Subcontracts. Exhibit 4 to this Contract, **as an accounting tool only**, provides the method by which the Construction Team (Owner, CMAr and Architect) may continuously determine whether the Work is within the GMP throughout the Construction Phase. The general assumptions made in developing the GMP in Exhibit 4 are contained in Exhibit 3. The bid package line item amounts contained in Exhibit 4 will be adjusted according to the amounts of the applicable Subcontract awards utilizing the "Construction Manager-at-Risk Contingency" line item as the balance line item. In any event, the GMP total shall not be altered, except by Change Order or Supplemental Agreement to this Contract.

4.2 CMAr shall award each trade construction subcontract to the lowest responsible bidder whose bid is responsive to the request for bids, provided the lowest bid is within the amount

established for the specific GMP bid package line item as specified in Exhibit 4. CMAr shall document the award of each trade construction subcontract by submitting a letter to Owner in accordance with the award notification letter attached to and made a part of this Supplemental Agreement No. 1 as Exhibit 5. In such event, the difference between the actual low bid and the amount specified in the GMP bid package line item shall be accounted for by adding the difference to the "Construction Manager-at-Risk Contingency" line item. However, if all trade construction subcontract bids received exceed the amount specified in Exhibit 4 for the bid package line item, one or more of the following initial procedures will be undertaken at Owner's direction following submission of the recommendation of CMAr:

- (a) deletion of non-essential bid alternates to try to bring the bid within the amount specified on Exhibit 4 hereto, but without reducing the scope of the Work unless Owner approves;
- (b) reject all bids and rebid;
- (c) redesign to lower the cost to the budgeted amount, but only with Owner's consent, and rebid; or
- (d) proceed with the award using, with CMAr's consent, funds contained in the "Construction Manager-at-Risk Contingency" (uncommitted budgeted funds or funds saved from prior bid package line-item awards which were below the established bid package line item amounts) to pay the excess here.

4.3 If CMAr has submitted its own bid for the bid package line item as permitted by Section 2269.255(b), Texas Government Code, as amended, and Owner determines that CMAr's bid is within the GMP bid package line item and provides the best value, Owner may allow CMAr to perform the Work for that line item with CMAr's own forces, with the option of subcontracting all or any portions of that Work to third parties of CMAr's choice.

4.4 In the event procedures stated in Paragraph 4.2 (a), (b) or (c) are undertaken, CMAr will provide Owner with a subsequent recommended procedure. By execution of this Supplemental Agreement No. 1, CMAr represents and warrants to Owner that any advertisement for rebids and award of contracts by CMAr as specified in Paragraph 4.2 shall comply and be consistent with the General Conditions, special provisions, if any, Instructions to Bidders, and with all applicable laws of the State of Texas. If no bids are received on a particular item, the Owner may direct CMAr to: (a) rebid the item; or (b) if Owner determines that no reasonable bid can be obtained through rebidding or that further rebidding cannot be done because a genuine emergency threatens the integrity and progress of the Project, complete the Work under the bid package item with its own forces, with the option of subcontracting all or any portion thereof to third parties of CMAr's choice. Owner may reject CMAr's initial or subsequent recommended procedure under Paragraph 4.2, and elect to follow one of the alternative procedures specified above, including requiring CMAr to perform the Work with its own forces, with the option of subcontracting all or any portion of the Work to third parties of CMAr's choice. If CMAr performs any work with

its own forces or subcontracts all or any portion of the Work to third parties of CMAr's choice under the provisions of this Article, CMAr shall do so **at cost plus jobsite overhead only**, but the Guaranteed Maximum Price shall not be increased thereby. Costs with regard to bid package line-item Work performed by CMAr's own forces or by third parties of CMAr's choice shall be accounted for separately and reflected in subsequent adjustments to the Exhibit 4 bid package line item amounts, without increasing the Guaranteed Maximum Price.

- 4.5 With the approval of Owner, CMAr may provide incidental labor and materials in connection with its professional services at the Project site that cannot be economically or reasonably contracted to others, or which cannot be purchased under competitive bidding.
- 4.6 The form of each trade construction subcontract shall be CMAr's standard form, adjusted to conform with the requirements of this Contract. **The subcontract form shall include a full indemnification of the Owner and the Architect, shall provide the same scope of indemnity as is set forth in this Supplemental Agreement, and shall contain such other clauses as may be required to fully protect Owner's interests.** It shall be the responsibility of CMAr to make payment properly due the Subcontractors from funds paid to CMAr by Owner for that purpose, subject to the provisions of this Contract, pursuant to applications submitted for payment, with certification given to Owner following such payment.

**ARTICLE 5
DATE FOR SUBSTANTIAL COMPLETION;
LIQUIDATED DAMAGES AND EXTENSIONS**

- 5.1 Subject to receipt of a notice to proceed with the Work by _____, the Project shall be Substantially Complete on or before _____. For unexcused failure to substantially complete the Project on or before _____, or any extension thereof granted by Owner, Owner shall be entitled to recover from CMAr or his Surety, liquidated damages in the amount of **\$500.00 per day** for each calendar day that the time for Substantial Completion of the Project exceeds the date specified in this Supplemental Agreement No. 1 for Substantial Completion (_____). The amounts are agreed to and stipulated by Owner and CMAr not as a penalty, but as a just and reasonable forecast of the damages Owner would sustain in the event of CMAr's breach of the requirement for the time of performance, the calculation of actual damages being impractical, uncertain and extremely difficult to ascertain with precision. Such stipulated amount shall be recovered by deducting same from the monies due or to become due to CMAr, and if the funds withheld are insufficient to cover the amount of liquidated damages owing, CMAr or CMAr's Surety shall pay the additional amounts owed. Nothing in this Paragraph fixes any liquidated damages as to CMAr's breach of any other term, covenant, or condition of this Contract; these provisions apply only as to the failure to achieve Substantial Completion within the time required.
- 5.2 If CMAr is delayed at any time in the orderly progress of the Work, the date for Substantial Completion of the Project shall be extended by Change Order for a period of time not

greater than the length of such delay as measured on the critical path of the construction schedule if the cause of the delay is for any of the following reasons (notwithstanding the above, however, the time extension will be granted only if the delay cannot reasonably be made up elsewhere in the construction schedule), provided that CMAr gives written notice of a claim for time extension within the time period and in the manner required under Article 4.3 of the General Conditions:

- (a) any act, neglect, or failure to act by the Owner or the Architect or by any employee, officer, official, department, or representative of either;
- (b) any separate contractor employed by the Owner;
- (c) changes ordered in the Work;
- (d) labor disputes, fire, unusual delay in transportation, unavoidable casualties;
- (e) any other causes beyond CMAr's control (excluding weather-related delays, except as provided in Paragraph 5.3 below); or
- (f) any delay expressly authorized or directed in writing by the Owner.

5.3 The date for Substantial Completion provided in Paragraph 5.1 includes an allowance for the number of days in which the average weather conditions do not allow the prosecution of the work, as those average weather conditions are determined by the National Weather Service, Fort Worth Bureau, for the time period in question. In regard to extensions of time proposed for weather-related delays, therefore, Owner will extend the date for Substantial Completion of the Project only for delays caused by unusually severe weather conditions, deemed to be in excess of the average weather conditions, if all of the following criteria are met: (a) the unusually severe weather conditions and the delay are adequately documented, based on CMAr's data collected at the Project site, information from the official records of the National Weather Service, Fort Worth Bureau, and information from the Subcontractor in question; (b) the Work could not be performed on at least one-half of each Work day for which an extension of time is requested as a result of the weather, and not some other cause; (c) the delay cannot reasonably be made up elsewhere in the Project Time Schedule; and (d) the cumulative number of days the Work was actually delayed because of weather conditions during the period in question exceeds the cumulative number of days, based on average weather conditions, of possible weather delay built into the Project Time Schedule for the period in question. CMAr shall document the actual versus normal weather conditions along with any resultant delays and actual number of days worked by the Subcontractors. The provisions of Paragraph 5.2 of this Supplemental Agreement No. 1 and Article 4.3 of the General Conditions shall govern any request or claim for an extension of time by CMAr. Nothing in this Paragraph 5.3 shall be construed as requiring Owner, under any circumstances, to be liable for any claim for extra costs or extra compensation resulting from or associated with any weather delay, whether normal or unusually severe. The terms of this Paragraph 5.3 shall be incorporated into and made a

part of all Subcontracts entered into by CMAr in connection with construction of the Project.

**ARTICLE 6
CONSTRUCTION MANAGER-AT-RISK'S FEE FOR
CONSTRUCTION MANAGEMENT SERVICES**

6.1 In consideration of the performance of the Phase II Work under this Supplemental Agreement No. 1, the Owner agrees to pay CMAr an additional Construction Management Fee as set forth in Paragraph 6.1.1.

6.1.1 For all Phase II Work performed, Owner shall pay CMAr a Fee of _____ percent (____%) of the total Cost of the Work as defined in Article 7 of this Supplemental Agreement No. 1. The Fee shall be paid in monthly installments in proportion to percentage of the Phase II Work completed, subject to five percent (5%) retainage. Any balance (including retainage) of this Fee shall be paid at the time of final payment. However, in no event shall the total amount of this Fee, all other compensation and Cost of the Work due Construction Manager-at-Risk exceed the Guaranteed Maximum Price, subject to adjustment by Change Order.

6.1.2 For professional services rendered for Phase I of the Project from _____, through the date of this Supplemental Agreement No. 1, CMAr received separate, additional compensation in the amount of \$_____. The compensation received shall be considered as part of CMAr's Fee under this Contract, and is included in the Guaranteed Maximum Price.

6.2 Included in CMAr's Fee are the following expenses related to the Phase II Work:

6.2.1 Salaries or other compensation of CMAr's employees at the principal office and branch offices, except employees listed in Subparagraphs 7.2.1, 7.2.2 and 7.2.24, of this Supplemental Agreement No. 1.

6.2.2 General operating expenses of CMAr's central or principal office and branch offices other than the field office.

6.2.3 Any part of CMAr's capital expenses employed for the Work, including interest on CMAr's capital.

6.2.4 Profit, overhead, or general expenses of any kind, including but not limited to legal fees for in-house or outside attorneys, except as may be expressly excluded altogether or otherwise included in Article 7 of this Supplemental Agreement No. 1.

6.2.5 Costs incurred for all Design Phase Services, whether performed prior to the date of this Supplemental Agreement No. 1 or thereafter, except as provided in Paragraph 6.1.2 hereof.

- 6.3 Monthly invoices for the payment of Construction Manager-at-Risk's Fee as set out hereinabove shall be submitted as part of CMAr's itemized Application for Payment under Article 9 of the General Conditions.

ARTICLE 7 COST OF THE WORK

- 7.1 The term "Cost of the Work" shall mean costs necessarily incurred in the performance of the Work during the Construction Phase, and paid or payable by CMAr, and not included in CMAr's Fee as set forth in Article 6 of this Supplemental Agreement No.1.

7.1.1 The Owner agrees to pay CMAr for the Cost of the Work as defined in this Article 7, subject to submission by CMAr of all back-up substantiation as may be reasonably required by the Owner's Director. Such payment shall be in addition to CMAr's Fee specified in Article 6. However, in no event shall the sum of payments for the Cost of the Work, CMAr's Fee and any other CMAr compensation exceed the Guaranteed Maximum Price, as adjusted by Change Order.

- 7.2 Cost items.

7.2.1 Wages paid for labor in the direct employ of CMAr in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by the Owner and CMAr, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Work except with prior consent of the Owner, and shall include the items set forth below in this Article. The reasonable cost of drug testing for all of CMAr's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Work.

7.2.2 Salaries of CMAr's employees at or below the level of Project Manager, when engaged on the Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.

7.2.3 Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of CMAr and included in the Cost of the Work under Subparagraphs 7.2.1, 7.2.2, 7.2.23 and 7.2.24 herein.

7.2.4 With prior Owner approval, the proportion of reasonable travel and hotel expenses incurred outside of the Dallas/Fort Worth metropolitan area by CMAr's officers or employees in discharge of duties directly connected with the Work.

7.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.

7.2.6 Payments made by CMAr to Subcontractors for Work performed pursuant to Subcontract, entered into in the performance of this Contract.

7.2.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value of such items used but not consumed which remain the property of CMAr.

7.2.8 In connection with CMAr's professional services and with prior Owner approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from CMAr or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current AED Manual. Further in regard to equipment and machinery rented by CMAr from an affiliate, subsidiary, or other entity under the control of CMAr, the rental rate for equipment and machinery shall not exceed 75% of the current AED Manual rental charges and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. If rental charges reach the designated value for equipment and machinery rented from an affiliate, subsidiary, or other entity under the control of CMAr, the equipment or machinery in question shall thereafter belong to Owner, to be disposed of in accordance with Article 9 below. CMAr shall furnish Owner with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses CMAr as a part of the Cost of the Work. Equipment and machinery rented which becomes property of the Owner pursuant to this paragraph shall be delivered to Owner upon final completion and acceptance by Owner of all Work under the Project.

7.2.9 Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by CMAr, in the normal pursuit of the Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Work completed during the premium period. Cost of (payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon CMAr's negligence, under any insurance furnished by the Owner, or under insurance policies required by this Contract or deemed necessary by CMAr in the normal pursuit of the Work.

7.2.10 Taxes, if any, related to the Work. As Owner qualifies for exemption, however, under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, CMAr shall require all Subcontractors to prevent and be responsible for any erroneous payment of taxes covered by this exemption.

7.2.11 Permit fees, licenses, tests, royalties; deposits lost for causes other than CMAr's negligence.

7.2.12 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with, and for the benefit of, the Work.

7.2.13 Cost of removal of debris. Removal of debris left by other contractors hired by Owner is not a part of this Contract.

7.2.14 Cost incurred due to an emergency affecting the safety of persons and property.

7.2.15 Other costs incurred in the performance of the Work, if and to the extent approved in advance in writing by Owner.

7.2.16 The reasonable, actual direct cost of data processing services as required for the Project. Such costs shall be specifically documented as having been done for the Project.

7.2.17 Legal costs growing out of prosecution of the Work for Owner will only be reimbursable if the legal costs were incurred at Owner's written direction to protect Owner's direct legal interests in the Project, after the prior written approval of Owner's City Council. No other legal costs shall be allowed or considered as part of the Cost of the Work under this Article.

7.2.18 Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or video tape records.

7.2.19 All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, or other similar items.

7.2.20 Costs incurred by CMaR in preparing and maintaining progress schedules, budgets, and reports required hereby.

7.2.21 Service fees assessed by Associated General Contractors of America and the Associated Building Contractors, but only as they relate to the Phase II Work.

7.2.22 The reasonable, actual direct cost of computer services, including Project site and main office terminal, for purposes of field payroll preparation and control. The costs shall be specifically itemized and documented as having been done for the Project.

7.2.23 Salaries of CMaR's Project Manager and Contract Manager, Safety Engineer, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of this Supplemental Agreement No. 1, whether stationed at the Field Office or at the Main Office of CMaR, for that portion of their time spent on this Work.

7.2.24 Where not otherwise included in the Cost of the Work under Subparagraphs 7.2.16, 7.2.20 and 7.2.22, the cost of central accounting services in connection with the Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting, and preparation of other reports.

- 7.3 If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of CMAr, CMAr is put in charge of reconstruction, CMAr shall be paid a fee for its services proportionate to the fee specified in Article 6 of this Supplemental Agreement No.1. Any reconstruction work shall be considered part of the Scope of the Work, except that the CMAr's Fee under the Guaranteed Maximum Price shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the procedure set out in Paragraph 8.1.2 below.
- 7.4 Costs incurred by CMAr to correct or remedy defective or nonconforming work performed by CMAr's own forces, or where the responsible Subcontractor fails to perform, shall not be a Cost of the Work, and shall be CMAr's sole responsibility, at no additional cost to the Owner; provided, however, CMAr shall be entitled to the proceeds of any Subcontractor performance or maintenance bond, where a Subcontractor has defaulted in this regard.
- 7.5 Costs not expressly included in the cost items of Paragraph 7.2 of this Supplemental Agreement No. 1 and costs expressly excluded elsewhere in this Supplemental Agreement No. 1 shall not be considered a Cost of the Work.

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders.

8.1.1 Subject to Paragraph 8.1.2 below, Owner, without invalidating this Contract or the Project Contract Documents, may order changes in the Work consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and the Project Time Schedule being adjusted accordingly where necessary. All Changes in the Work shall be authorized by a fully executed Supplemental Agreement or Change Order in accordance with Article 7 of the General Conditions for the applicable bid package. In this regard, all Subcontracts shall contain a provision entitling Owner to make changes in the Drawings or Specifications after performance has commenced, or to decrease or increase the quantity of Work to be performed or materials, equipment, or supplies to be furnished; provided, however, that the original Subcontract price shall not be increased by more than twenty-five (25%) percent.

8.1.2 Following receipt of Subcontractor bids by Owner amounting to 75% of the value of Subcontract line-item amounts, the Construction Team shall continue to review the revised line item amounts (contained in Exhibit 4), adjusted to reflect the actual Subcontract amounts. Where review indicates an over-all savings in the line items, based upon bids received below original estimates, resulting in an increase in the "Construction Manager-at-Risk Contingency" line item, Owner shall, at that time and subsequently

during the term of this Contract, be authorized to transfer all amounts in excess of \$350,000.00 from the "Construction Manager-at-Risk Contingency" to the "Owner's Contingency," and to order necessary additive changes in the Work, all without increasing the GMP. Any use by Owner of the original or adjusted "Owner's Contingency" will be made without increasing the GMP. Owner may, at its option, utilize the "Construction Manager-at-Risk Contingency" balance for additive changes in the Work; however, in that event, Director shall acknowledge, in writing, the additive changes as being outside the original scope of the Work, in order that CMaR may be entitled to a subsequent credit to the "Construction Manager-at-Risk Contingency" line item (an addition to the GMP) for the amount of such portion utilized for such additive changes in the event the "Construction Manager-at-Risk Contingency" line item amount is insufficient for its intended purpose under this Contract.

8.1.3 ALL CHANGE ORDERS SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. Any Change Order affecting one Subcontractor shall include all changes necessary to all Subcontractors. No action or omission to act by Owner or Architect, or acceptance and approval of a Change Order, shall be deemed a waiver, release, revision, modification or deletion of this absolute condition; and any reservations or other provisions in a Change Order allowing for future additional money or time, over and above the specific prices and extensions granted therein, shall be deemed null and void, or otherwise unenforceable and withdrawn.

8.2 Claims for additional cost.

8.2.1 If CMaR wishes to make a claim for Additional Services directed by Owner, necessitating an increase in the Guaranteed Maximum Price, or necessitating use of contingency funds, it shall give Owner written notice thereof after the occurrence of the event giving rise to such claim, in accordance with Article 4.3 of the General Conditions. No such claim shall be valid unless so made. This notice shall be given by CMaR before proceeding to execute the work, except in an emergency endangering life or property, in which case CMaR shall act, at his discretion, to prevent threatened physical damage, injury, or loss. Any change in the Guaranteed Maximum Price or in Construction Manager-at-Risk Contingency line item resulting from such claim may only be authorized by Change Order. However, it is understood and agreed that one of CMaR's primary duties is the anticipation and avoidance of potential claim situations.

8.2.2 All claims and disputes between CMaR and Owner shall first be submitted to Architect for review and evaluation. Architect shall timely submit in writing its findings, conclusions and recommendations to Owner, with a copy of same to CMaR. Further, under the conditions described in Paragraph 8.1.2 above, and in the manner set forth in Paragraph 8.1.2, Owner may, after validation of CMaR's claim, authorize an additive Change Order with regard to that claim, without increasing the Guaranteed Maximum Price at that time,

provided that sufficient Construction Manager-at-Risk Contingency or Owner Contingency funds exist.

8.3 Minor Changes in the Work.

8.3.1 The Architect shall have authority to order minor Changes in the Work, within the Scope of the Work, not involving additional cost or an extension of the Project Time Schedule and not inconsistent with the Contract Documents. Such Changes may be effected by Field Order. Such Changes shall be binding on the Owner and CMAr, provided notice and reasonable opportunity to object have been given.

8.4 Field Orders.

8.4.1 The Architect may issue written Field Orders which interpret the Plans and Specifications or which order minor Changes in the Work in accordance with Paragraph 8.3.1 above, without change in the Guaranteed Maximum Price or extension of the Project Time Schedule.

8.5 Emergencies.

8.5.1 In any emergency affecting the safety of persons or property, CMAr shall act, at its discretion, to prevent threatened physical damage, injury or loss. Any additional compensation or extension of time claimed by CMAr on account of emergency work shall be determined as provided in this Article.

**ARTICLE 9
DISCOUNTS, REFUNDS, SALES OF SURPLUS MATERIALS**

9.1 All discounts, if realized, for prompt payment shall belong to the Owner and shall be accounted for in the applicable line item. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall likewise belong to the Owner, and CMAr and Owner shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

**ARTICLE 10
APPLICATIONS FOR PAYMENT**

10.1 Except as modified by this Article 10, payments to CMAr during Phase II shall be in accordance with Article 9 of the General Conditions.

10.2 CMAr shall furnish to Owner a monthly statement of the work performed during the preceding month for which it claims it is entitled to be paid. This statement shall be in a form based upon a "Schedule of Values" as defined in Paragraph 9.2 of the General Conditions. The statement shall include all monthly payroll data, by classification, of CMAr's field personnel and of the personnel of the Subcontractors and all lower tier subcontractors at the Project site. All payroll records must be maintained and submitted by

Workers' Compensation classification codes. CMAr shall require Subcontractors to secure monthly payroll data from lower tier subcontractors for inclusion in the monthly statement. The statement may also include the reasonable value of materials or equipment not yet incorporated into the Project but delivered, inspected, and suitably stored at the Project site or, with the Director's consent and subject to compliance with any conditions made a part of this consent, at some other location agreed upon in writing in accordance with Paragraph 9.3(e) of the General Conditions.

- 10.3 Each statement shall include an amount for CMAr's Fee computed on the basis of 100% of the amount earned for the statement period, less applicable retainage.
- 10.4 CMAr agrees that 5% of the amounts due under each Subcontract shall be retained by the Owner until thirty (30) days after Final Completion of the Project under this Contract, except that upon mutual agreement by the Architect, City Manager and CMAr, and with consent of the CMAr's surety, payment in full shall be made to those Subcontractors whose work is fully completed and accepted during the early stages of the Project.
- 10.5 The Architect will review CMAr's statement of monies due and will promptly issue a Certificate for Payment to Owner for such amounts as approved.
- 10.6 Final payment, constituting the unpaid balance of the Cost of the Work, retainage due Subcontractors, and the balance of CMAr's Fee (including retainage), shall be paid by the Owner to CMAr thirty (30) days after Final Completion of the Project and Acceptance by Owner, and a final Certificate for Payment has been issued by the Architect, all in accordance with Article 9 of the General Conditions.
- 10.7 No amounts due Manager under this Contract, other than for payments to Subcontractors (or payments to Manager for work done by its own forces) and Manager's Fee, shall be subject to retainage.

ARTICLE 11 INSURANCE

- 11.1 Article 7 ("Insurance") of the original Contract is hereby supplemented to provide that CMAr shall purchase and maintain the following additional insurance for the term of the Contract:

LIABILITY INSURANCE

- (1) Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to Owner; and Employer's Liability

Insurance at a limit of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

- (2) Commercial General Liability Insurance. Coverage shall insure CMAr for Work performed under the Contract against claims for bodily injury, including death, of any person other than CMAr's employees, and property damage for injury to or destruction of tangible property other than the Work itself (the broad form property damage coverage must be extended to apply to completed operations). The policy shall be endorsed to remove any property damage liability exclusions pertaining to loss by explosion, collapse or underground hazards, and shall include coverage extended to apply to asbestos hazards, if the Project involves work with asbestos. The policy shall include:
- (A) Products/Completed Operations Liability, to be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner.
 - (B) Independent Contractor's Liability to cover CMAr's liability arising out of work performed by the Subcontractors or lower tier subcontractors.
 - (C) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions contained in this Contract and in Paragraphs 3.19 and 10.2(e) of the General Conditions.
 - (D) Personal Injury Liability, with the employee exclusion deleted.
 - (E) Limits of liability shall be not less than a combined bodily injury (including death) and property damage minimum limit of \$5,000,000 per occurrence, \$5,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the Project and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. **OWNER, AND ARCHITECT SHALL ALSO BE NAMED AS ADDITIONAL INSUREDS USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.** The policy shall include endorsement CG2503 amendment of limits (designated project or premises), in order to extend the policy's limits specifically to the Project.

- (3) Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
- (4) "Umbrella" Liability Insurance. The policy shall insure CMAr for an amount of not less than \$25,000,000 per occurrence combined single limit for bodily injury (including death) and property damage, that follows form and is in excess of the primary liability insurance coverage required above. **OWNER AND THE ARCHITECT SHALL BE NAMED AS ADDITIONAL INSUREDS USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.**

PROPERTY INSURANCE

- (5) CMAr shall purchase and maintain such Boiler and Machinery Insurance as may be required by the Contract Documents or by law, at such time as the exposure commences. This insurance shall include the interests of Owner, the Architect, CMAr, the Subcontractors and lower tier subcontractors in the Work.

CERTIFICATE OF INSURANCE

- (6) Certificates of insurance acceptable to Owner evidencing the insurance coverages required shall be filed with Owner prior to commencement of the Work. **OWNER SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THE CONTRACT UNTIL THE REQUIRED CERTIFICATES OF INSURANCE HAVE BEEN DELIVERED TO OWNER, AND NO OFFICER OR EMPLOYEE OF OWNER SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** These certificates shall contain a provision that coverages afforded under the policies will not be materially changed, cancelled or non-renewed until at least thirty (30) days prior written notice has been given to Owner. When requested by Owner, certified copies of any of the policies, plus any endorsements, will be furnished to Owner at no cost. Certificates of insurance for insurance required of Subcontractors under Article 11 of the General Conditions shall be furnished to CMAr instead of Owner.
- (7) CMAr agrees that in regard to the above-required insurance coverage, all insurance contracts and certificates of insurance will contain and state, in writing, the following required provisions:

- (A) Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of CMAr.
 - (B) The term “City” or “City of Mesquite” shall include all authorities, Boards, Bureaus, Commissions, Divisions, Departments, and officers of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the City of Mesquite.
 - (C) The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City’s Self-Insured retentions of whatever nature.
 - (D) All provisions of the Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- 11.2 Any insurance policies required under Paragraph 11.1 above may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.
- 11.3 Where negligence liability is not covered by insurance, the CMAr, Subcontractors, Owner and Architect shall each be responsible for their own negligent or strictly liable acts or omissions, subject to the applicable indemnity provisions of this Contract, CMAr’s Subcontract form and the General Conditions. This provision shall never be held to have been made or entered into for the benefit of third persons, but shall be strictly construed for the benefit of the parties hereto exclusively. Also, this provision shall not be deemed to alter Paragraph 3.19 or Paragraph 10.2(e) of the General Conditions, or be construed as a waiver by Owner of its governmental immunity.
- 11.4 Owner reserves the right to review the insurance requirements of this section during the effective period of the Contract and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Management Department, based upon economic conditions, the recommendation of professional insurance advisors, changes in statutory law, court decisions, or other relevant factors. CMAr agrees to make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by Owner, CMAr shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- 11.5 Approval, disapproval or failure to act by Owner regarding any insurance supplied by CMAr or the Subcontractors shall not relieve CMAr of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy

or insolvency of CMAr's insurer nor any denial of liability by CMAr's insurer shall exonerate CMAr from the liability or responsibility of CMAr set forth in this Contract.

- 11.6 CMAr and Owner mutually waive subrogation rights each may have against the other for loss or damage, to the extent same is covered by the proceeds of insurance. The waiver of subrogation of CMAr shall be noted on the certificate of insurance furnished by CMAr.

ARTICLE 12 PERFORMANCE AND PAYMENT BONDS

- 12.1 With the execution and delivery of this Supplemental Agreement No. 1 to the Contract, CMAr shall furnish to Owner, in the amounts herein required, the following Surety Bonds in the form attached hereto, in accordance with the provisions of Chapter 2253, Texas Government Code, as amended:
- (a) A Performance Bond in the full amount of the Guaranteed Maximum Price, guaranteeing the full and faithful execution of the Work and performance of this Contract, in accordance with the Plans, Specifications and Contract Documents, including any revisions thereof pursuant to the Contract Documents, for the protection of the Owner. This bond shall also provide for the repair or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Substantial Completion of the Work.
 - (b) A Payment Bond in the full amount of the Guaranteed Maximum Price, guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the Work and for the use of each such claimant.
- 12.2 Each Bond shall be executed by CMAr, as Principal, and one or more corporate sureties fully acceptable to Owner. Owner reserves the absolute right to reject any proposed Surety in litigation with Owner, or any of Owner's agencies.

ARTICLE 13 INDEMNIFICATION

- 13.1 Section 11.2 of Article 11 of the original Contract is hereby amended to read as follows:

"11.2 CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS

OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF CMAR, ITS OFFICERS, AGENTS, OR EMPLOYEES, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR THE ARCHITECT, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CMAR, THE OWNER, AND THE ARCHITECT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. WHERE THE CMAR PERFORMS WORK WITH ITS OWN FORCES OR WITH A CONTRACTOR OF ITS OWN CHOOSING UNDER PARAGRAPH 4.2 OF SUPPLEMENTAL AGREEMENT NO. 1, THE INDEMNITY PROVISIONS CONTAINED IN THE GENERAL CONDITIONS SHALL APPLY AND SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THIS INDEMNITY PROVISION."

**ARTICLE 14
ORIGINAL CONTRACT TO APPLY**

- 14.1 As modified or amended by this Supplemental Agreement No. 1, all of the terms, conditions, provisions and obligations of the original Contract between the parties, executed _____, shall remain in full force and effect, and shall apply to the provisions of this Supplemental Agreement No. 1.

EXECUTED this the ____th day of _____, 202__ by Owner, signing by and through its City Manager, duly authorized to execute same by the City Council on _____, and by CMAr, acting through its duly authorized officials.

**CITY OF MESQUITE
(CITY)**

(CONSTRUCTION MANAGER-AT-RISK)

BY _____
Cliff Keheley
City Manager

BY _____
PRINTED
NAME: _____
TITLE: _____

ATTEST:

ATTEST:

BY _____
Sonja Land
City Secretary

BY _____
Corporate Secretary

APPROVED AS TO FORM:

BY _____
Assistant City Attorney