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# **GREASEWOOD SPRINGS COMMUNITY SCHOOL**

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## **CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES**

### **GMP NO. 1**

**PROJECT NO. 0001-2024 GSCS New School Construction**

**CONTRACT NO. 01-24**

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## GREASEWOOD SPRINGS COMMUNITY SCHOOL

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### CONSTRUCTION MANAGER AT RISK

### CONSTRUCTION SERVICES

PROJECT NO. 0001-2024, CONTRACT NO. 01-24

**THIS AGREEMENT ("Agreement" or "Contract")**, made and entered by and between Greasewood Springs Community School ("GSCS"), a Navajo Non-Profit Corporation and P.L. 100-297 Grant School, hereinafter designated "GSCS" and \_\_\_\_\_, hereinafter designated the "Construction Manager at Risk" or "CM@R."

### RECITALS

- A. The GSCS School Board President is authorized and empowered by action of the School Board of Greasewood Springs Community School, hereinafter "Board," in open public meeting, to execute this contract for professional services and related construction services.
- B. GSCS intends to construct the New School and Related Facilities hereinafter referred to as the "Project," as more fully described in Exhibit A attached. The full street or physical address of the Project is: Highway 15, Greasewood Springs, AZ 86505, the mailing address is 431 Rte. 15, Ganado, AZ 86505. The full street or physical address of the Project shall be included in each subcontract of CM@R and/or each subcontractor at any level.
- C. To provide design and construction administration services for said project GSCS has entered into a contract with Dyron Murphy Architects, P.C., hereinafter referred to as the "Design Professional" or "Architect" or "A/E".
- D. To undertake project management responsibility relative to this Project, GSCS has entered into a contract with Tsenjikini Consultants LLC, a Navajo Nation L.L.C., Principal, Len Chester, hereinafter referred to as the "GSCS Project Manager," or "GPM" and hereby designates the GSCS Project Manager GSCS's representative relative to this Project and Contract. It shall be assumed that all references to GSCS in this Contract shall be deemed to include the GPM.
- E. The CM@R has represented to GSCS the ability to provide construction management services and to construct the Project and based on this representation GSCS engages the CM@R to provide these services and construct the Project.
- F. An Agreement has been executed previously between GSCS and CM@R to perform design phase services relative to this Project. That Agreement and the services identified therein shall continue to be in full force and effect during the duration of this Contract except as may be expressly superseded by this Contract.

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

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## Article 1 - Definitions

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**“Agreement (“Contract”)** This written document signed by the GSCS and CM@R covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

**“Change Directive”** A written order prepared and signed by GSCS, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

**“Change Order”** A type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by GSCS, CM@R and other parties as may be required or appropriate, agreeing to changes to a GMP and/or the Scope of Work. The Change Order will state the following as may be appropriate: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

**“Construction Documents”** The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

**“Construction Fee”** The CM@R’s administrative costs, home office overhead, and profit as applicable to this project whether at the CM@R’s principal or branch offices.

**“CM@R”** The firm selected by GSCS to provide construction services as detailed in this Agreement.

**“CM@R’s Contingency”** A fund to cover cost growth during the project used upon written notice to GSCS and the GPM and otherwise at the discretion of the CM@R usually for costs that result from project circumstances. The amount of the CM@R’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@R’s Contingency is described in Subdivision 5.1.2.3. The CM@R shall document each use of the contingency in writing to include nature of the use, cost remaining balance and provide said documentation to GSCS prior to the use.

**“CM@R’s Representative”** The person designated in Subdivision 8.3.2. Not to be confused with GSCS’s agent, GPM, defined as GSCS Project Manager herein.

**“Contract Documents”** The following items and documents in descending order of precedence executed by GSCS and the CM@R: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications; (v) the CM@R Design Phase Services Agreement; (vi) Request for Qualifications (“RFQ”) No. 0001-2024 issued by GSCS relative to the Project.

**“Contract Price”** The amount or amounts set forth in Article 5.

**“Contract Time”** The period of time as set forth in Article 4, including authorized adjustments, allotted in the Contract Documents for Substantial and Final Completion of the Work.

**“Cost of the Work”** The direct costs necessarily incurred by the CM@R in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, applicable permit and license fees, if any, materials testing, and related items. The Cost of the Work shall not include the CM@R’s Construction Fee, General Conditions Costs, and taxes.

“Critical Path” The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will delay achieving Substantial Completion.

“Day(s)” Calendar day(s) unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” The Agreement between GSCS and CM@R for the Services provided by the CM@R during the design phase and as may be subsequently needed which may include, but is not limited to, the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, NPEA/MBE/WBE/SBE utilization, subcontractor bid phase services and GMP preparation and other services set forth in the Agreement or reasonably inferable therefrom. The Design Phase Contract shall remain in full force and effect throughout the term of this Contract. Should there be a conflict between the Design Phase Contract and this Contract, this Contract shall control.

“Design Professional” The qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.

“Differing Site Conditions” Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“GSCS” (“Owner” or “OWNER”) GSCS, a Navajo Non-Profit Corporation and P.L. 100-297 Grant School, GSCS, with whom CM@R has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

“GSCS’s Representative” The person designated in Subdivision 8.3.1 herein. The GSCS Principal or their delegatee shall be the GSCS Representative unless otherwise expressly noted. The GSCS Representative delegates GPM Services to the GPM identified herein. References to the GSCS Representative shall include the GPM except as noted in 8.3.1.

“Final Acceptance/Completion” Means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to, all Punch Lists work, all record and close-out procedures and documents specified in Owner’s Project specifications and Owner training/start up activities. See Section 4.2.

“Float” The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” includes, but is not limited to the following types of costs for the CM@R during the construction phase: (i) payroll costs for project manager or CM@R for managerial work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CM@R or Subcontractors.

“Guaranteed Maximum Price” or “GMP” The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@R’s Contingency.

“GMP No. 1” means the first GMP.

“GMP Plans and Specifications” The plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Legal Requirements” or “Laws” All applicable federal, Navajo and local laws, codes, ordinances, rules, regulations, orders, GSCS Policies and Procedures and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work. GSCS has adopted the cited Arizona Administrative Code (A.A.C.) Sections and related Arizona law regarding procurement, contracting and administering contracts of and for Construction Manager at Risk (“CM@R”) construction services as GSCS Policies and not as controlling law. This Contract shall be subject exclusively to Navajo law and courts and the Laws noted above will be implemented in accordance with and subject to Navajo law and as interpreted by Navajo courts NOT Arizona law or courts. GSCS has acted in this manner because the above identified policies establish thorough, long-standing procedures and rules to be used in procuring, contracting and administering CM@R services. Use of these policies will further the legitimacy of the process and protect the public interests in this project and use of this CM@R delivery method. However, to repeat and make clear, this Contract shall be exclusively subject to and controlled by Navajo law, applicable Federal Law and Grant conditions with jurisdiction in Navajo courts and shall not be subject to the laws or jurisdiction of any other state or entity including Arizona.

Applicable Federal Law includes 2 C.F.R. 200 with special emphasis on 2 C.F.R. 200.317 through 2 C.F.R. 200.346 including appendices thereto which are adopted by reference herein and in any contract arising from this Contract. The contract provisions required by 2 C.F.R. 200.327 and set forth at Appendix II of this part are attached hereto and made a part of this Contract and any contract arising from this Contract.

Navajo preference will be applied in compliance with Navajo law.

“Notice to Proceed” or “NTP” The directive issued by GSCS, authorizing the CM@R to start Work.

“Owner’s Contingency” A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s contingency will be set solely by the Owner and will be in addition to the project costs included in the CM@R’s GMP packages. Use and management of the Owner’s contingency is described in Division 5.1.3. CM@R shall have the same documentation duties relative to Owner’s Contingency as set forth in the Definition CM@R Contingency noted above.

“Performance Period” The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.

“Payment Request” Requests by the CM@R for progress or final payments for Work which must be submitted in accordance with Article 7 on GSCS approved forms with supporting documentation as required by the Contract Documents and/or GSCS.

“Product Data” Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@R to illustrate materials or equipment for some portion of the Work.

“Project” The Work to be completed in the execution of this Agreement as amended and as described in the SOWs, RFQ, Recitals above and in Exhibit A attached hereto.

“Project Manager” The Project Manager is under separate contract with GSCS, working as an agent to provide construction program management services. None of the activities of the Project Manager supplant or conflict with designing, budgeting, constructing, or any other services and responsibilities customarily furnished by the Design Professional or CM@R. The Project Manager shall be GSCS’s representative as set forth in this definition, Subdivisions 3.2 and 3.3 herein and Recital D herein.

“Project Record Documents” The documents created pursuant to Section 2.11.

“Samples” Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” Drawings, diagrams, schedules and other data specially prepared for the Work by the CM@R or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” The land or premises on which the Project is located.

“Specifications” The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

“Subcontractor” An individual or firm having a direct contract with the CM@R or any other individual or firm having a contract with the aforesaid Contractors at any tier, who undertakes to perform a part of the construction phase Work for which the CM@R is responsible. Subcontractors shall be selected in compliance with A.A.C. R7-2-1112(G) which is adopted as GSCS policy and not Arizona law.

“Substantial Completion” When the Work, or an agreed upon portion of the Work, is sufficiently complete so GSCS can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by GSCS Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to GSCS or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by GSCS; (vi) draft O&M manuals and record documents reviewed and accepted by GSCS; (vii) GSCS operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work completed; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to Section 2.5.3.

“Supplier” A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@R or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@R or any Subcontractor.

“Work” The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **Article 2 - CM@R's Services and Responsibilities**

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- 2.0** The CM@R shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for GSCS. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@R in Arizona, in the city, town or county where the Work is to be constructed. The Work shall be to the satisfaction of GSCS and strictly pursuant to and in conformity with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.
- 2.1** The CM@R may self-perform part or all of the construction work to the extent agreed in writing by GSCS and the CM@R and in strict compliance with R7-2-1112(F) as adopted as GSCS Policy and not Arizona law upon a determination that the price GSCS pays to the CM@R for self-performed work is fair and reasonable as explained in A.A.A. R7-2-1112(F).
- 2.2** The CM@R shall select Subcontractors and Major Suppliers based on a combination of qualifications and price and shall not select Subcontractors based on price alone, in a single step selection as set forth at A.A.C. R7-2-1112(G)(1)(1.2), as adopted unless the Parties otherwise agree to a different Subcontractor selection plan, in compliance with A.A.C. R7-2-1112(G) as GSCS Policy and not Arizona law, and attach such plan as an amendment to this Contract.
- 2.3** CM@R's Representative shall be reasonably available to GSCS and shall have the necessary expertise and experience required to supervise the Work. CM@R's Representative shall communicate regularly with GSCS but not less than once a week and shall be vested with the authority to act on behalf of CM@R. CM@R's Representative may be replaced only with the written consent of GSCS.
- 2.4 Government Approvals and Permits**
- 2.4.1** Unless otherwise provided, CM@R shall obtain or assist GSCS to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@R is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**
- 2.4.2** Copies of these permits and notices must be provided to GSCS's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the Project Manager. This provision does not constitute an assumption by GSCS of an obligation of any kind for violation of said permit or notice requirements.
- 2.4.3** GSCS shall be responsible for permit(s) and fees for building and demolition permits that are applicable. GSCS will not reimburse CM@R or pay for permit or inspections from which it is exempt. GSCS will also pay review fees for grading and drainage, water, sewer, and landscaping when applicable. GSCS shall also pay for utility design fees for permanent services.
- 2.4.4** CM@R shall be responsible for all other permits and review fees not specifically listed in Section 2.4.3 above.
- 2.4.5** CM@R is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@R's responsibility.
- 2.4.6** The CM@R shall make best efforts to use Navajo, MBE, WBE, SBE and/or LOCAL contractors and suppliers.



## **2.5 Pre-construction Conference**

- 2.5.1** Prior to the commencement of any Work, the Project Manager will schedule a Pre-construction conference.
- 2.5.2** The purpose of this conference is to establish a working relationship between the CM@R, utility firms, various GSCS agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required and emergency telephone numbers for all representatives involved in the course of construction.
- 2.5.3** The Notice to Proceed date will be concurred to by the parties or set by GSCS. At or after the meeting and upon receipt of a signed contract and delivery of the required bonds and insurance in a GSCS approved format or at such other time as GSCS may elect, a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable, the Substantial and Final Completion dates. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed and/or as set forth in Article 1 herein. Failure by the CM@R to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial and Final Completion dates nor be a basis for any time extension request or other claims.
- 2.5.4** The CM@R shall provide a detailed schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and which shall identify the CM@R's Contingency. The schedule of values will subdivide the Work into all items comprising the Work and essential to the "Open Book" process which is required by this Contract.
- 2.5.5** Minimum attendance at the Preconstruction conference held by the CM@R shall be the CM@R's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, the CM@R's safety officer and GSCS and as GSCS may require.
- 2.5.6** The CM@R shall provide GPM with a detailed written report of the Pre-Construction Conference within ten (10) days of the Conference.

## **2.6 Control of the Work**

- 2.6.1** Unless otherwise provided in the Contract Documents to be the responsibility of GSCS or a separate contractor, CM@R shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@R to complete the Work consistent with the Contract Documents.
- 2.6.2** CM@R shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@R shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.6.3** CM@R or the CM@R's Superintendent shall be present at the Site at all times that construction activities are taking place.
- 2.6.3.1** All elements of the Work shall be under the direct supervision of a foreman or her/his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.6.3.2** In the event of noncompliance with this Division, GSCS may require the CM@R to stop or suspend the Work in whole or in part.
- 2.6.4** Where the Contract Documents require that a particular product be installed and/or applied by an

applicator approved by the manufacturer, it is the CM@R's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

- 2.6.5** Before ordering materials or doing work, the CM@R and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the GPM for resolution before proceeding with the work. Upon resolution, the resolution shall be clearly documented in the as-builts by CM@R.
- 2.6.6** The CM@R shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@R with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to GSCS immediately.
- 2.6.7** The CM@R shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona or New Mexico.
- 2.6.8** Any person employed by the CM@R or any Subcontractor who, in the opinion of GSCS, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the educational setting of the worksite, shall, at the written request of GSCS, be removed from the Work by CM@R or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of GSCS. The CM@R or Subcontractor shall keep GSCS harmless from damages or claims which may occur in the enforcement of this Section.
- 2.6.9** CM@R assumes responsibility to GSCS for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between GSCS and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.6.10** CM@R shall coordinate the activities of all Subcontractors. If GSCS performs other work on the Project or at the Site with separate contractors under GSCS's control, CM@R agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

## **2.7 Control of the Work Site**

- 2.7.1** Throughout all phases of construction, including suspension of Work, CM@R shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@R to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@R shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit GSCS to occupy the Project or a portion of the Project for its intended use.
- 2.7.2** CM@R shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of GSCS and in accordance with the requirements of any applicable Rules and Regulations or such other specifications as the parties may agree in writing.
- 2.7.3** CM@R shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@R shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

**2.7.4** Only materials and equipment which are to be used directly in the Work shall be brought to and safely stored on the Site by the CM@R. When equipment is no longer required for the Work, it shall be removed promptly from the Site.

**2.7.5** Protection of the Work, the construction site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@R.

## **2.8 Shop Drawings, Product Data and Samples**

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

**2.8.2** The CM@R shall review, approve, verify, and submit to GSCS five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of GSCS or of separate contractors. Submittals made by the CM@R, which are not required by the Contract Documents, may be returned without action.

**2.8.3** The CM@R shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by GSCS. Such Work shall be in accordance with approved submittals.

**2.8.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@R represents that the CM@R has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**2.8.5** The CM@R shall not be relieved of responsibility for deviations from requirements of the Contract Documents by GSCS's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@R has specifically informed GSCS in writing of such deviation at the time of submittal and GSCS has given written approval to the specific deviation. The CM@R shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by GSCS's approval thereof.

**2.8.6** The CM@R shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by GSCS on previous submittals.

**2.8.7** Informational submittals upon which GSCS is not expected to take responsive action may be so identified in the Contract Documents.

**2.8.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, GSCS shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.9 Quality Control, Testing and Inspection**

**2.9.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

**2.9.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by GSCS. Any material rejected by GSCS shall be removed immediately and replaced in

an acceptable manner.

- 2.9.3** The procedures and methods used to sample and test material will be determined by GSCS. Unless otherwise specified, samples and tests shall be made in accordance with the 2021 MAG Uniform Standard Specifications and the standard methods of AASHTO or ASTM as referenced in the 2021 MAG Uniform Standard Specifications as they may be amended or superseded or as expressly agreed in writing by the Parties.
- 2.9.4** GSCS will select a pre-qualified Independent Testing Laboratory and will pay for initial GSCS Acceptance Testing.
  - 2.9.4.1** When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the CM@R. CM@R's Contingency cannot be utilized for the cost of re-testing.
  - 2.9.4.2** When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.9.5** The CM@R will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.9.6** At the option of GSCS, materials may be approved at the source of supply before delivery is started.
- 2.9.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@R, unless otherwise provided in the Contract Documents.
- 2.9.8** CM@R's convenience and quality control testing and inspections shall be the sole responsibility of the CM@R and paid by the CM@R.
- 2.10 Trade Names and Substitutions.**
  - 2.10.1** Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, may be permitted, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:
    - 2.10.2** The substitution shall be submitted by CM@R in writing to GSCS.
    - 2.10.3** The CM@R shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
    - 2.10.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
    - 2.10.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
    - 2.10.6** The CM@R if requested by GSCS shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
    - 2.10.7** GSCS will make the final decision and will notify the CM@R in writing as to whether the substitution has been accepted or rejected.

**2.10.8** If GSCS does not respond in a timely manner, the CM@R shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

## **2.11 Project Record Documents**

**2.11.1** During the construction period, the CM@R shall maintain at the jobsite a set of redline, blue-line or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes. CM@R contractor will certify that these documents are up to date when they submit their monthly pay application. The CM@R shall also:

**2.11.1.1** Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
- Details not on original Contract Drawings.
- Similar deviations, variations and modifications.

**2.11.1.2** Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

**2.11.1.3** Mark Project Record Drawings sets with red erasable colored pencil.

**2.11.1.4** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

**2.11.1.5** As a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the GSCS Representative for review and comment.

**2.11.2.** Upon receipt of the reviewed Project Record Drawings from the GSCS, the CM@R shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to GSCS within 14 Days:

**2.11.2.1** A complete set of electronic Project Record Drawings prepared in AutoDesk format compatible with GSCS CADD technology. The Design Professional will provide files of the original Construction Documents to the CM@R for the use of preparing these final Project Record Drawings or the CM@R may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

**2.11.2.2** A complete set of reproducible Translucent Bond Paper drawings from the final AutoDesk drawings.

**2.11.2.3** The original copy of the Project Record Drawings (redline mark-ups).

## **2.12 Project Safety**

- 2.12.1.** CM@R recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.12.2.** CM@R assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.12.3.** CM@R shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@R's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety. CM@R shall inform the GPM in writing as to the identity of the Safety Representative and any changes in that position.
- 2.12.4.** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@R's personnel, Subcontractors and others as applicable. CM@R shall provide GSCS copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.
- 2.12.5.** CM@R and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any GSCS-specific safety requirements set forth in the Contract Documents, provided that such GSCS-specific requirements do not violate any applicable Legal Requirement.
- 2.12.6.** CM@R will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to the GPM and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.12.7.** CM@R's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.13 Warranty**

- 2.13.1.** CM@R warrants to GSCS that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.13.2.** CM@R's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@R or anyone for whose acts CM@R may be responsible and/or liable.
- 2.13.3.** CM@R's warranty obligation shall be for two years from Final Completion, except for such greater period as may be required by the technical specifications.
- 2.13.4.** Nothing in this warranty is intended to limit any manufacturer's warranty which provides GSCS with greater warranty rights than set forth in this Section or the Contract Documents. CM@R will provide GSCS with all manufacturers' warranties upon Substantial Completion.

**2.13.5** Nothing in this warranty is intended to limit any other remedy at law that may be available to GSCS.

**2.14 Correction of Defective Work**

**2.14.1.** CM@R agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.13 above, within a period of two years from the date of Final Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by GSCS, shall not constitute acceptance of Work not in accordance with the Contract Documents.

**2.14.2.** During the Work, CM@R shall take meaningful steps to commence correction of such nonconforming Work as notified by GSCS. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps during the Work, GSCS, in addition to any other remedies provided under the Contract Documents, may provide CM@R with written notice that GSCS will commence correction of such nonconforming Work with its own forces and assess CM@R with the costs therefore.

**2.14.3.** CM@R shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.13 above, within seven days of receipt of written notice from GSCS. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps within such seven day period, GSCS, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide CM@R with written notice that GSCS will commence correction of such nonconforming Work with its own forces and assess CM@R with the costs therefore.

**2.14.4.** If GSCS does perform such corrective Work, CM@R shall be responsible for all reasonable costs incurred by GSCS in performing such correction.

**2.14.5.** In the event nonconforming Work creates an emergency requiring an immediate response, the CM@R will respond and initiate corrections within twenty-four hours.

**2.14.6.** The two year period referenced in Division 2.14.1 above applies only to CM@R's obligation to correct nonconforming Work as provided in this section and is not intended to constitute a period of limitations for any other rights or remedies GSCS may have regarding CM@R's obligations under the Contract Documents or as may be allowed by law.

### **Article 3 - GSCS's Services and Responsibilities**

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#### **3.1 Duty to Cooperate.**

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

#### **3.2 GSCS's Representative**

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

#### **3.3 Design and/or other Construction Professional Services**

- 3.3.1** GSCS may contract separately with one or more Design and/or other Construction Professionals (DCP), to include the GPM, to provide construction administration of the project. The CM@R shall not have any right to limit or restrict any contract modifications that are mutually acceptable to the DCP. The term "other Construction Professional" includes Project Manager.
- 3.3.2** GSCS may contract with the DCP to provide some or all of the following services during the performance of the Work.
  - 3.3.2.1** Provide oversight of the Work. GSCS and CM@R shall endeavor to communicate through the DCP. Communications by and with the DCP's consultants shall be through the DCP.



- 3.3.2.2** The DCP shall conduct site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The DCP will keep GSCS informed of progress of the Work, and will endeavor to guard GSCS against defects and deficiencies in the Work. The DCP may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.9.
- 3.3.2.3** The DCP shall review, certify and recommend approval of Payment Requests.
- 3.3.2.4** The DCP shall review and approve or take other appropriate action upon the CM@R's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.8.
- 3.3.2.5** The DCP shall interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either GSCS or CM@R. The DCP's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** The DCP shall prepare Change Orders/Change Directive, and may authorize minor changes in the Work as provided in Article 6.
- 3.3.2.7** The DCP shall conduct inspections to determine Substantial Completion and Final Acceptance/Completion.
- 3.3.2.8** The DCP shall receive and forward to GSCS for the GSCS's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@R.
- 3.4** **GSCS's Separate Contractors.** GSCS is responsible for all work performed on the Project or at the Site by separate contractors under GSCS's control. GSCS shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@R in order to enable CM@R to timely complete the Work consistent with the Contract Documents.
- 3.5** **Permit Review and Inspections.**
- 3.5.1** If requested by the CM@R, GSCS's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

## **Article 4 - Contract Time**

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### **4.0. Contract Time.**

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

### **4.1. Substantial Completion**

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying GSCS in accordance to Section 4.1.3 below, the CM@R shall inspect the Work and prepare and submit to GSCS a comprehensive list of items to be completed or corrected. The CM@R shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@R to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CM@R shall notify GSCS when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of GSCS's receipt of CM@R's notice, GSCS and CM@R and others at their election will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, GSCS shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days of the Substantial Completion date and before Final Acceptance/Completion, (iii) provisions (to the extent not already provided in the Contract Documents) establishing GSCS's and CM@R's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance/Completion, (iv) an acknowledgment that warranties commence to run on the date of Final Completion, except as may otherwise be noted in the Certificate of Substantial Completion, and (v) the date for Final Acceptance/Completion.
- 4.1.6.** GSCS, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.1.5 above, (ii) CM@R and GSCS

have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) GSCS and CM@R agree that GSCS's use or occupancy will not interfere with CM@R's completion of the remaining Work or compromise the health, safety or welfare of the users of that portion of the Work.

**4.2. Final Acceptance/Completion.** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, GSCS and CM@R and others at their election will jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.1.5. Upon GSCS's determination that Final Completion has been achieved, GSCS will issue a Final Acceptance/Completion Letter and payment pursuant to Section 7.4.

**4.3. Liquidated Damages**

**4.3.1.** CM@R understands that if Substantial Completion is not attained within the Contract Time as adjusted, GSCS will suffer damages which are difficult to determine and accurately specify. CM@R agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@R shall pay the GSCS (\$1,500.00) as liquidated damages for each calendar Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is not a penalty, and is fair and reasonable under the circumstances.

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

**4.4. Incentive Bonuses**

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

**4.5. Project Schedule**

**4.5.1.** The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

**4.5.2.** The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@R of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

**4.5.3.** An updated Project Schedule shall be submitted monthly to GSCS as part of the Payment Request.

**4.5.3.1.** CM@R shall provide GSCS with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) a detailed invoice describing the work completed for which payment is requested (iii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iv) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

**4.5.3.2.** With each schedule submittal the CM@R shall include a transmittal letter including the following:

- Description of problem tasks referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:

- Cause of the delay
    - Corrective action and schedule adjustments to correct the delay
    - Known or potential impact of the delay on other activities, milestones, and by the date of Substantial Completion.
  - Changes in construction sequence
  - Pending items and status thereof including but not limited to:
    - Time Extension requests
    - Other items
  - Substantial Completion date status:
    - If ahead of schedule, the number of calendar days ahead.
    - If behind schedule, the number of calendar days behind.
  - Other project or scheduling concerns
- 4.5.4.** GSCS's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@R from compliance with the requirements of the Contract Documents or be construed as relieving the CM@R of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 4.5.5.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.5.5.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.5.5.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.5.5.3.** The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.5.5.4.** The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.
- 4.5.5.5.** The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 4.5.5.6.** The schedule shall show milestones, including milestones for GSCS-furnished information, and shall include activities for GSCS-furnished equipment and furniture when those activities are interrelated with the CM@R activities.
- 4.5.5.7.** The schedule shall include a critical path activity that reflects anticipated rain and weather delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by GSCS.
- 4.5.6.** The Project Schedule shall consider GSCS's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.5.7.** Float time shall be as prescribed below;

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

## Article 5- Contract Price

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- 5.0.** The CM@R agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved Guaranteed Maximum Price.
- 5.1. Contract Price**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of \$----- for Owner's Contingency.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@R is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@R's Contingency shall revert to GSCS.
- 5.1.2.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
- 5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 5.1.2.3** CM@R's Contingency is an amount the CM@R may use under the following conditions: (1) upon notice to GSCS at its discretion for increases in the Cost of the Work which shall be documented in writing by the CM@R, or (2) with written approval of GSCS for increases in General Condition Costs. CM@R's Contingency is assumed to be a direct project cost and, therefore, shall and shall be assumed to have received all markups at the time of GMP submission. CM@R shall be responsible for documenting all use of the contingency at the time of each use, in writing, by identifying the use, the amount, the current total dollar amount of such uses, the balance of the contingency and other reasonably pertinent details. Discretion for increase in the Cost of the Work which shall be documented in writing by the CM@R, and with written approval of GSCS for increases in General Conditions Costs. CM@R contingency is assumed to be a direct Project Cost and, therefore, shall be assumed to have received all markups at the time of the GMP submission. CM@R shall be responsible for documenting each and all uses of the contingency at the time of each use, in writing, by identifying the use, the cost, the current total dollar amount of such uses, the balance of the contingency and other reasonably pertinent details. This documentation shall be available to GSCS representative upon reasonable request.
- 5.1.2.3.1** When the CM@R utilizes CM@R's Contingency funds, the CM@R shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@R shall deduct the amount of CM@R's Contingency funds used from the CM@R's Contingency line item and add the same amount to the line item on the schedule of values where the funds were used. If the CM@R's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.2.4** Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and is a not-to-exceed reimbursable amount. Taxes as treated in this section include applicable Navajo and local taxes, if any.
- 5.1.3** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@R, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@R at the time that Owner's Contingency is used. CM@R shall be responsible for documenting each and all uses of the Owner's Contingency at the time of each use, in writing, by

identifying the use, the cost, the current dollar amount of such uses, the balance of the Owner's Contingency and other reasonably pertinent details.

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

## **Article 6 - Changes to the Contract Price and Time**

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### **6.0. Delays to the Work**

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

### **6.1. Differing Site Conditions**

- 6.1.1.** If CM@R encounters a Differing Site Condition, CM@R may be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@R's cost and/or time of performance are substantially and directly adversely impacted by the Differing Site Condition.
- 6.1.2.** Upon encountering a Differing Site Condition, CM@R shall provide prompt written notice to GSCS of such condition, which notice shall not be later than five (5) days after such condition has been encountered. CM@R shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

### **6.2. Errors, Discrepancies and Omissions**

- 6.2.1.** If the CM@R observes errors, discrepancies or omissions in the Contract Documents, he/she shall promptly notify the Design Professional and request clarification.



**6.2.2.** If the CM@R proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CM@R does so at her/his own risk. Adjustments involving such circumstances made by the CM@R prior to clarification by the Design Professional shall be at the CM@R's risk.

**6.3. GSCS Requested Change in Work**

**6.3.1.** GSCS reserves the right to make, at any time during the progress of the Work, such alterations to the Work as may be found necessary or in the GSCS's best interest.

**6.3.2.** Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@R agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

**6.3.3.** GSCS will request a proposal for a change in Work from CM@R, and any adjustment in the Contract Price and/or Contract Times shall be made based on a mutually agreed upon cost and time.

**6.4. Legal Requirements**

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

**6.5. Change Directives and Change Orders**

**6.5.1.** GSCS and CM@R shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

**6.5.2.** All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

**6.6. Minor Changes in the Work**

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

**6.6.2.** CM@R may make minor changes in Work, provided, however that CM@R shall promptly inform GSCS, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@R.

**6.6.3.** Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

**6.7. Contract Price Adjustments**

**6.7.1.** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**6.7.1.1.** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**6.7.1.2.** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by GSCS; and

- 6.7.1.3.** Costs, fees and any other markups.
- 6.7.2.** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit B.
- 6.7.3.** If an increase or decrease cannot be agreed to as set forth in items 6.7.1 through .3 above and GSCS issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@R shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4.** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to GSCS or CM@R because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.7.5.** If GSCS and CM@R disagree upon whether CM@R is entitled to be paid for any services required by GSCS, or if there are any other disagreements over the scope of Work or proposed changes to the Work, GSCS and CM@R shall resolve the disagreement pursuant to Article 8 and 8.1 hereof.
- 6.7.5.1.** As part of the negotiation process, CM@R shall furnish GSCS with a good faith estimate of the costs to perform the disputed services in accordance with GSCS's interpretations.
- 6.7.5.2.** If the parties are unable to agree and GSCS expects the CM@R to perform the services in accordance with GSCS's interpretations, CM@R shall proceed to perform the disputed services, conditioned upon GSCS issuing a written order to CM@R (i) directing CM@R to proceed and (ii) specifying GSCS's interpretation of the services that are to be performed.
- 6.7.6. Emergencies.** In any emergency affecting the safety of persons and/or property, CM@R shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

## **Article 7- Procedure for Payment**

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- 7.0.** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of GSCS and to its satisfaction, GSCS agrees to pay the said CM@R the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CM@R's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below and in compliance with A.A.C. R7-2-1104-1105 and 1114 adopted as GSCS Policy and not Arizona law. There shall be retention as allowed under and in compliance with R7-2-1114 and 1104 adopted as GSCS Policy and not Arizona law for payments made under this contract.

All Time requirements for payment shall be initiated upon funding by the Federal Government ("FG") for all such work to be paid for by the FG. The time periods set forth herein shall be initiated upon FG funding of the requisite amounts for payment to GSCS and the date on which GSCS may disburse such funds.

### **7.1. GMP Payment Request**

- 7.1.1.** At the pre-construction conference prescribed in Section 2.5, CM@R shall submit for GSCS's review and approval a detailed schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@R throughout the Work and shall be detailed to facilitate and support the Open Book procedures which are a part of this Contract.
- 7.1.2.** At least five (5) working days prior to the date established for a Payment Request, the CM@R shall submit an updated Project Schedule and meet with the GPM to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3.** The Payment Request shall constitute CM@R's certification that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to GSCS free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- 7.1.4.** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.
- 7.1.4.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and GSCS shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.1.4.2.** For materials and equipment stored off the Site, GSCS must approve the storage. The material and equipment must be stored within the County where the Work is to be constructed or as GSCS may otherwise approve in writing and be accessible for GSCS's inspection. The CM@R must protect GSCS's interest and shall be responsible for insurance, bonding, storage and transportation to the Site.
- 7.1.4.3.** All bonds and insurance required for stored materials shall name GSCS as the loss payee to the extent of its interest in the stored materials.
- 7.1.5.** CM@R shall submit its payment request to GSCS on the monthly anniversary of the construction Notice To Proceed beginning with the first month after the construction Notice To Proceed.

### **7.2. Payment of GMP**

- 7.2.1.** GSCS shall make payment in accordance with A.A.C. R7-2-1114 and 1104-1105 adopted herein as GSCS Policy and not as Arizona law, as may be modified by FG funding as noted in Section 7.0 above. Payment will be made as set forth in the referenced provisions but in each case, less

the total of payments previously made, and less amounts properly retained under Section 7.3 below or as otherwise allowed by GSCS Policies, and FG requirements and applicable law.

- 7.2.2.** GSCS shall pay CM@R all amounts properly due. If GSCS determines that CM@R is not entitled to all or part of a Payment Request, it will notify CM@R in writing within (7) days after the date Payment Request is received by the GSCS. The notice shall indicate the specific amounts GSCS intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@R must take to rectify GSCS's concerns. CM@R and GSCS will attempt to resolve GSCS's concerns. If the parties cannot resolve such concerns, CM@R may pursue its rights under the Contract Documents, including those under Article 8 and 8.1 hereof.

**7.3. Retention on GMP**

- 7.3.1.** All retention shall be retained and paid out pursuant to A.A.C. R7-2-1114 and 1104 adopted herein as GSCS Policies, not as Arizona law and other applicable GSCS Policies, Federal and Navajo law. Where the provisions of this agreement conflict with the above referenced GSCS Policy, the GSCS Policy shall control. GSCS will retain ten percent (10%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM@R, upon request of the CM@R, and providing CM@R is making satisfactory progress on the Project, GSCS may pay CM@R one-half (1/2) the amount retained to that point and reduce the amount subsequently retained to five percent (5%) from CM@R's subsequent Payment Requests. If, at any time GSCS determines satisfactory progress is not being made, the 10% retention shall be reinstated for all progress payments made under this agreement subsequent to the determination.

- 7.3.2.** In lieu of retention, the CM@R may provide as a substitute, only the substitute securities listed at R7-2-1114 and 1104 adopted herein as GSCS Policies, not as Arizona law and in strict compliance with the procedures set forth in R7-2-1114 and 1104. In the event of any conflict between the provisions of this Agreement and R7-2-1114 and 1104, R7-2-1114 and 1104, as amended, shall control.

- 7.3.2.1.** CDs assigned to GSCS must be maintained at GSCS's servicing bank in the form of time deposit receipt accounts.

- 7.3.2.2.** Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in proximity to GSCS.

- 7.3.2.3.** CDs and Securities shall be assigned exclusively for the benefit of GSCS pursuant to an appropriate Escrow Agreement.

- 7.3.2.4.** All substitute securities must be accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either GSCS or the CM@R in relationship to the security assigned.

- 7.3.3.** GSCS shall pay or substitute security shall be returned to CM@R within 60 days after Final Completion and acceptance of work under the Contract unless GSCS provides a specific written finding of reasons justifying the delay and payment of retention. However, GSCS may not retain any monies after 60 days which are in excess of the amount necessary to pay the expenses GSCS reasonably expects to incur in order to pay or discharge the expenses determined in the finding justifying the retention of monies.

**7.4. Final Payment**

- 7.4.1.** After receipt of a final Payment Request and in compliance with A.A.C. R7-2-1114 and 1104 adopted herein as GSCS Policies, not as Arizona law, GSCS shall make final payment 60 days after the receipt by GSCS, provided that CM@R has completed all of the Work in conformance with the Contract Documents, a Final Acceptance/Completion Letter has been issued by GSCS,

and the CM@R has provided the information and documents noted in 7.4.2.

**7.4.2.** At the time of submission of its final Payment Request, CM@R shall provide the following information:

**7.4.2.1.** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect GSCS's interests;

**7.4.2.2.** A general release executed by CM@R waiving, upon receipt of final payment by CM@R, all claims, except those claims previously made in writing to GSCS and remaining unsettled at the time of final payment; and

**7.4.2.3.** Consent of CM@R's surety, if any, to final payment.

**7.5. Payments To Subcontractors or Supplier**

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

**7.5.2.** If the CM@R fails to make payments in accordance with these provisions, GSCS may take any one or more of the following actions and CM@R agrees that GSCS may take such actions:

**7.5.2.1.** Hold the CM@R in default under this Agreement;

**7.5.2.2.** Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

**7.5.2.3.** Reject all future offers to perform work for GSCS from the CM@R for a period not to exceed one year from Substantial Completion date of this Project; and/or

**7.5.2.4.** Terminate this agreement.

**7.5.2.5.** GSCS shall, pursuant to A.A.C. R7-2- 1105(C) adopted as GSCS Policy not as Arizona law and a Subcontractor's written request to GSCS, notify the Subcontractor in writing within five (5) days from payment of each progress payment made to the Contractor. The Subcontractor's request and GSCS's performance remains in effect for the duration of the Subcontractor's work on the Project.

**7.5.3.** Should GSCS fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

**7.5.4.** CM@R shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

**7.6. Record Keeping and Finance Controls**

**7.6.1.** Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project

and records of accounts between GSCS and CM@R shall be kept on a generally recognized accounting basis and shall be available for review by GSCS or authorized entity for five years after Final Acceptance/Completion of the Project and at no cost to GSCS or authorized entity and as otherwise in compliance with A.A.C. R7-2-1083.

- 7.6.2.** GSCS, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.
- 7.6.3.** GSCS reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data. Records of the CM@Risk 's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the GSCS and CM@Risk shall be kept on a generally recognized accounting basis. GSCS, its authorized representative, and/or the appropriate GSCS, Navajo or Federal agency, reserves the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any change orders. GSCS reserves the right to decrease Contract price and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 7.6.4.** The CM@Risk shall include a similar provision in all of its agreements with subcontractors or subconsultants providing services under this Contract to ensure GSCS, its authorized representative, and/or the appropriate State or Federal agency, has access to the subconsultants' records to verify the accuracy of cost and pricing data. GSCS reserves the right to decrease Contract price and/or payments made on this Contract if the above provision is not included in subconsultant contracts, and one or more subconsultants do not allow GSCS or appropriate State or Federal Agency to audit their records to verify the accuracy and appropriateness of pricing data.
- 7.6.5.** The CM@Risk shall provide all of the above records, documents, and materials and shall participate in the audit as part of Basic Services under this Contract and shall have no right of recovery or payment for providing the above-described records, documents, and materials in so participating. The cost of any audits conducted pursuant to this provision and not addressed elsewhere will be borne by GSCS unless certain exemption criteria are met. If the audit identifies overpricing or overcharges of any nature by the CM@Risk in excess of ½ of 1% (.5%) of the total Contract billings, the CM@Risk shall reimburse GSCS for the total cost of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, GSCS may recoup the cost of the audit work from the CM@Risk. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the foregoing invoices and/or records shall be made within a reasonable amount of time, not to exceed ninety (90) days, from the presentation by GSCS of the claim for adjustment or payment to the CM@Risk. The above-described records and documents shall be maintained as set forth above for five (5) years after the conclusion of the final completion of the project. This provision shall survive the termination of this Contract.
- 7.6.6.** The CM@R shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure GSCS, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.6.7.** GSCS reserves the right to decrease Contract Price and/or payments made under this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow GSCS to audit their records to verify the accuracy and appropriateness of pricing data.

## **Article 8- Claims and Disputes**

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### **8.0. Requests for Contract Adjustments and Relief**

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

### **8.1. Dispute Avoidance and Resolution**

- 8.1.1.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@R and GSCS each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.1.2.** CM@R and GSCS will first attempt to resolve disputes or disagreements at the field level through discussions between CM@R's Representative and GSCS's Representative, or their designee(s).
- 8.1.3.** If a dispute or disagreement cannot be resolved through field level discussions, CM@R's Representative and GSCS's Representative, upon the request of either party, shall meet in a separately scheduled formal meeting, as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the Representatives so agree other persons or parties may participate in this meeting.
- 8.1.4.** For any disputes not resolved pursuant to the foregoing provisions, the following procedures shall apply:
  - 8.1.4.1.** In signing this Agreement, CM@R agrees that any cause CM@R may have against the GSCS and its Governing Board arising in relation to this Procurement, Project and Agreement, including but not limited to, contract claims and controversies, including claims related to assignees of the CM@R, shall be resolved exclusively through litigation pursuant to Navajo law, without exception and under the exclusive jurisdiction of Navajo courts.
  - 8.1.4.2.** The parties agree that the Design or other Construction Professionals and their consultants, Subcontractor, Suppliers or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

**8.2. Duty to Continue Performance** Unless provided to the contrary in the Contract Documents, CM@R shall continue to perform the Work and GSCS shall continue to satisfy its payment obligations to CM@R, pending the final resolution of any dispute or disagreement between CM@R and GSCS.

**8.3. Representatives of the Parties**

**8.3.1. GSCS's Representative** GSCS designates the individual listed below or its designee as its Representative ("GSCS's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

Lucinda Godinez, Principal, or successor or designee  
Greasewood Springs Community School  
Address: HC 58 Box 60, Ganado, AZ 86505  
Phone: (928) 654-3331  
Fax: (928) 654-3384

**8.3.2. CM@R's Representative** CM@R designates the individual listed below as its Representative ("CM@R's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

\_\_\_\_\_ Construction

\_\_\_\_\_  
Address:  
Phone:  
Fax:



## **Article 9 – Suspension and Termination**

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### **9.0. GSCS's Right to Stop Work**

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

### **9.1. Termination for Convenience**

- 9.1.1.** Upon receipt of written notice to CM@R, GSCS may, at its discretion and without cause, elect to terminate this Agreement. In such event, GSCS shall pay CM@R only the direct value of its completed Work and materials supplied as of the date of termination. CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead or other payments.
- 9.1.2.** If GSCS suspends the Work for 181 consecutive days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CM@R shall proceed with the following obligations.
  - 9.1.3.1** Stop Work as specified in the notice.
  - 9.1.3.2** Place no further subcontracts or orders.
  - 9.1.3.3** Terminate all subcontracts to the extent they relate to the work terminated.
  - 9.1.3.4** Assign to GSCS all right, title and interest of the CM@R under the subcontracts terminated, in which case GSCS shall have the right, but not the obligation, to settle or to pay any termination settlement proposal arising out of those terminations.
  - 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to the contract that is in the possession of the CM@R and which GSCS has or may acquire an interest.
- 9.1.4** The CM@R shall submit complete termination inventory schedules no later than 90 days from the date of the notice of termination.
- 9.1.5** GSCS shall pay CM@R the following.
  - 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
  - 9.1.5.2** CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the CM@R would have sustained a loss on the entire Work had the CM@R completed the Work, the CM@R shall not be allowed profit and GSCS shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** The CM@R shall maintain all records and documents for five years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.6.

## **9.2. GSCS's Right to Perform and Terminate for Cause**

- 9.2.1.** If GSCS provides the CM@R with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@R fails to comply in a time frame specified, GSCS may have the work accomplished by other sources at the CM@R's expense.
- 9.2.2.** If CM@R persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, and in compliance with all other contract terms, conditions and specifications, or (vi) perform material obligations under the Contract Documents, then GSCS, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Divisions 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Section 9.2.2 above, GSCS may provide written notice to CM@R that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@R's receipt of such notice.
- 9.2.3.1.** If CM@R fails to cure, or reasonably commence to cure, such problem, then GSCS may give a second written notice to CM@R of its intent to terminate within an additional seven (7) day period.
- 9.2.3.2.** If CM@R, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then GSCS may declare the Agreement terminated for default by providing written notice to CM@R of such declaration.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subdivision 9.2.3.2 above, GSCS may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@R hereby transfers, assigns and sets over to GSCS for such purpose, including the assignment of subcontracts pursuant to Paragraph 12.7, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM@R shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@R will only be entitled to be paid for Work performed and accepted by GSCS prior to its default minus amounts described in Paragraph 9.2.6.
- 9.2.6.** If GSCS's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@R shall be obligated to pay the difference to GSCS. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by GSCS in connection with the procurement, completing construction and defense of claims arising from CM@R's default.
- 9.2.7.** If GSCS improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

## Article 10 - Insurance and Bonds

### 10.0. Insurance Requirements

**10.0.1** CM@R and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the CM@R, CM@R's agents, representatives, employees or Subcontractors.

**10.0.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement or amounts GSCS may recover.

**10.0.3** GSCS in no way warrants that the minimum limits contained herein are sufficient to protect the CM@R from liabilities that might arise out of the performance of the work under this Agreement by the CM@R, her/his agents, representatives, employees, or subcontractors. CM@R is free to purchase such additional insurance as may be determined necessary or prudent.

**10.1 Minimum Scope And Limits Of Insurance.** CM@R shall provide coverage with limits of liability not less than those stated below:

**10.1.1 Commercial General Liability – Occurrence Form**

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

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

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

**The policy shall contain a waiver of subrogation against GSCS.**

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

Combined Single Limit (CSL)	\$2,000,000
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The policy shall be endorsed to include the following additional insured language: **"The GSCS shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R, including automobiles owned, leased, hired or borrowed by the CM@R".**

**10.1.3 Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

The policy shall contain a **waiver of subrogation** against the GSCS.

**10.1.4 Builders' Risk Insurance or Installation Floater** \$\_\_\_\_\_

In an amount equal to the initial Agreement Amount plus additional coverage equal to Agreement Amount for all subsequent change orders.

- 10.1.4.1 GSCS, the CM@R, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the work shall be **Named Insureds** on the policy.
- 10.1.4.2 Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement**.
- 10.1.4.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made and accepted; or, (ii) until no person or entity, other than GSCS, has an insurable interest in the property required to be covered.
- 10.1.4.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by GSCS.
- 10.1.4.5 Policy must provide coverage from the time any covered property becomes the responsibility of the CM@R, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- 10.1.4.6 Policy shall contain a **waiver of subrogation** against GSCS.
- 10.1.4.7 CM@R is responsible for the payment of all policy deductibles.
- 10.2 **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:
  - 10.2.1 On insurance policies where GSCS is named as an additional insured, GSCS shall be an additional insured to the full limits of liability purchased by the CM@R even if those limits of liability are in excess of those required by this Agreement.
  - 10.2.2 The CM@R's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
  - 10.2.3 Coverage provided by the CM@R shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.3 **Notice Of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to GSCS. Such notice shall be sent directly to GSCS Representative and shall be sent by certified mail, return receipt requested.
- 10.4 **Acceptability Of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than A-VI. GSCS in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@R from potential insurer insolvency.
- 10.5 **Verification Of Coverage**
  - 10.5.1 CM@R shall furnish GSCS with certificates of insurance (ACORD form or equivalent approved by the GSCS) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 10.5.2** All certificates and endorsements are to be received and approved by GSCS before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
- 10.5.3** All certificates required by this Agreement shall be sent directly to GSCS's GPM. GSCS project/contract number and project description shall be noted on the certificate of insurance. GSCS reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE GSCS'S RISK MANAGEMENT DIVISION.**
- 10.5.4** If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the GSCS's requirements, the contractor must:
- Submit a current insurance certificate (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the insurance certificate is not submitted with the payment request and/or if the insurance or certificate is deficient or non-conforming.
- 10.6** **Subcontractors.** CM@Rs' certificate(s) shall include all Subcontractors as additional insureds under its policies **or** CM@R shall furnish to GSCS separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7** **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by GSCS, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 10.8** **Bonds and Other Performance Security.**
- 10.8.1** Prior to execution of this Agreement, the CM@R must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP set forth in this Agreement and in strict compliance with A.A.C. R7-2-1103 and 1114(B), adopted as GSCS Policies not Arizona law, statutes and regulations cited therein and other applicable laws and GSCS Policies.
- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to GSCS.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
- 10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@R shall promptly furnish a

copy of the bonds or shall permit a copy to be made.

- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A-VI or better for the prior four quarters" by the A.M. Best Company.

## **Article 11 - Indemnification**

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### **11.1 CM@R's General Indemnification**

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

## Article 12 – General Provisions

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### 12.1 Contract Documents

12.1.1 Contract Documents are as defined in Article 1.

12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

12.1.3.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.

12.1.3.2 Specifications take precedence over Plans.

12.1.3.3 The Design Phase Contract executed by the Parties remains in full force and effect until the completion of the Project and obligations thereunder. In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract

12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.1.5 The Contract Documents form the entire agreement between GSCS and CM@R and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

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

12.3 **Time is of the Essence.** GSCS and CM@R mutually agree that time is of the essence with respect to the dates, times and activities set forth in the Contract Documents.

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

12.5 **Cooperation And Further Documentation.** The CM@R agrees to provide GSCS such other duly executed documents as shall be reasonably requested by GSCS to implement the intent of the Contract Documents.

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

12.7 **Contingent Assignment of Subcontracts.** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

12.7.1 Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 9.2 and only for those subcontract agreements which the Owner accepts by notifying



the Subcontractor in writing.

- 12.7.2** Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Said contingent assignment shall be in all subcontracts.
- 12.8** **Successorship.** CM@R and GSCS intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.9** **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than GSCS and the CM@R, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of GSCS and the CM@R and not for the benefit of any other party.
- 12.10** **Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the Navajo Nation without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the applicable Navajo Court in the jurisdiction in which the Work is to be constructed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court. Any and all citations to Arizona law, codes and regulations ("Arizona law") are made pursuant to adoption of said Arizona law as GSCS Policy not as enforceable Arizona law or Arizona subject matter or personal jurisdiction and GSCS expressly rejects and disclaims any finding or enforceable effect of any Arizona law or jurisdiction and further expressly affirms the exclusive, controlling governance of this Contract by Navajo law with exclusive jurisdiction in Navajo Courts.
- 12.11** **Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.12** **Compliance with Federal Laws.** CM@R understands and acknowledges the applicability of Federal Laws including, but not limited to, the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@R agrees to comply with these laws in performing the Contract Documents and to permit GSCS to verify such compliance.
- 12.13** **Legal Requirements.** CM@R shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 12.14** **Fair Treatment of Workers.** The CM@R shall keep fully informed of all Federal and Navajo laws, Chapter and GSCS ordinances, regulations, codes, policies and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Work. CM@R shall at all times observe and comply with all such laws, ordinances, regulations, codes, policies, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, subject to compliance with the NPEA and NBOA including OSHA and the Fair Labor Standards Act (FLSA). The CM@R shall protect and indemnify GSCS and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- 12.15** **Independent Contractor.** The CM@R is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give GSCS the right to direct the CM@R as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@R shall follow the wishes of GSCS as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.16** **GSCS's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to

cancellation by GSCS pursuant to the provisions of Section 38-511, adopted as GSCS Policy not Arizona law, Arizona Revised Statutes and other applicable Arizona law.

- 12.17 Survival.** All warranties, representations and indemnifications by the CM@R shall survive the completion or termination of this Agreement.
- 12.18 Covenant Against Contingent Fees.** The CM@R warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member or agent of GSCS, Board, or any employee of GSCS has any interest, financially, or otherwise, in the CM@R firm. For breach or violation of this warrant, GSCS shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.19 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.19 Notice**
- 12.19.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CM@R:

\_\_\_\_\_ Construction

\_\_\_\_\_

Address:

Phone:

Fax:

To GSCS:

Lucinda Godinez, Principal, or designee or successor  
Greasewood Spring Community School  
Address: HC 58 Box 60, Ganado, AZ 86505  
Phone: (928) 654-3331  
Fax: (928) 654-3384

With a Copy to:

Len Chester, GSCS Project Manager (GPM)  
Address: HC 58 Box 60, Ganado, AZ 86505  
Phone: (928) 349-0940  
Fax: (928) 654-3384  
Email: [tsenjikini4@aol.com](mailto:tsenjikini4@aol.com)

To Design Professional:

Dyron Murphy Architects, P.C.  
Dyron V. Murphy, Principal/President  
Phone: (505) 830-0203  
Email: [dmurphy@dm-architects.com](mailto:dmurphy@dm-architects.com)

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

**12.19.2** Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CM@R:

\_\_\_\_\_ Construction

Address:

Phone:

Fax:

To GSCS:

Lucinda Godinez, Principal, or designee or successor

Greasewood Spring Community School

Address: HC 58 Box 60, Ganado, AZ 86505

Phone: (928) 654-3331

Fax: (928) 654-3384

With a Copy to:

Len Chester, GSCS Project Manager (GPM)

Address: HC 58 Box 60, Ganado, AZ 86505

Phone: (928) 349-0940

Fax: (928) 654-3384

Email: [tsenjikini4@aol.com](mailto:tsenjikini4@aol.com)

To Design Professional:

Dyron Murphy Architects, P.C.

Dyron V. Murphy, Principal/President

Phone: (505) 830-0203

Email: [dmurphy@dm-architects.com](mailto:dmurphy@dm-architects.com)

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

## **12.20 Equal Opportunity/Affirmative Action**

**12.20.1** Subject to the NPEA and NBOA, the CM@R shall comply with the provisions of this Agreement, including the requirements of GSCS policies, pertaining to discrimination and accepting applications or hiring employees. CM@R is fully informed of the NPEA and NBOA and agrees to provide the services under this Contract in compliance with those and other applicable Navajo law. The CM@R shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@R will take affirmative action as required by the NPEA and to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability; however, employment preferences required by the NPEA shall be implemented as required by the NPEA. Such action shall include but not be limited to the following, subject to the NPEA: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The CM@R further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM@R.

**12.20.2** Subject to the NBOA, GSCS extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for GSCS business and strongly encourages voluntary utilization of Navajo, Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

**12.20.3** The following two paragraphs apply to the CM@R named herein and shall appear in all contracts between the CM@R and any and all Subcontractors who are employed on this Project. The CM@R further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Subject to Navajo law including the NPEA and NBOA: "Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, pursuant to Navajo law including the preferences and other terms and conditions set forth in the NPEA and otherwise employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

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

## **12.21 Confidentiality Of Plans & Specifications**

**12.21.1** Any plans or specifications you receive regarding this project are for official use only. You may not share them with others except as required to fulfill the obligations of your contract with GSCS.

**12.21.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@R shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of your contract with GSCS".

- 12.22 CM@R and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@R shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare. CM@R shall at a minimum ensure that all relevant personnel shall obtain a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 and A.R.S. § 15-512(H) adopted herein as GSCS Policy and not Arizona law.
- 12.22.1 Security Inquiries.** CM@R acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@R shall exercise due diligence in conducting such checks and acting to prevent individuals who may compromise the health, safety and welfare of students, staff and/or community from being on the site or GSCS property. CM@R shall perform all such security inquiries and shall make the results available to GSCS for all employees considered for performing work (including supervision and oversight) under this Agreement. GSCS may make further security inquiries. Whether or not further security inquiries are made by GSCS, GSCS may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@R for performing work under this Agreement. Employees rejected by GSCS for performing services under this Agreement may still be engaged by CM@R for other work not involving GSCS. An employee rejected for work under this Agreement shall not be proposed to perform work under other GSCS contracts or engagements without GSCS's prior approval.
- 12.22.2 Criteria for Evaluating Security Inquiries.** Once formally adopted by GSCS, criteria for excluding an individual from performing work under this Agreement shall be communicated by GSCS to CM@R and used by CM@R as a factor in making its decision. Prior to such adoption, CM@R shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, Navajo, GSCS and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by GSCS in evaluating its own personnel.
- 12.22.3 Additional GSCS Rights Regarding Security Inquiries.** In addition to the foregoing, GSCS reserves the right to: (1) have an employee/prospective employee of CM@R be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) adopted as GSCS Policy not Arizona law; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@R's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@R performing work (including supervision and oversight) under this Agreement.
- 12.22.4 Terms of This Provision Applicable to all of CM@R Contracts and Subcontracts.** CM@R shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 12.22.5 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Agreement, as set forth above, are material to GSCS's entry into this Agreement and any breach thereof by CM@R may, at GSCS's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@R to liability for its breach of contract.
- 12.23 Hazardous Materials**
- 12.23.1** Unless included in the Work, if the CM@R encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, CM@R shall immediately stop work and report the condition to GSCS.

- 12.23.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@R shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@R and GSCS may agree, in writing, to continue work in non-affected areas onsite.
- 12.23.3** An extension of Contract Time may be granted in accordance with Article 6.
- 12.23.4** The CM@R will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 12.24** **Computer Systems** CM@R shall warrant fault free performance in the processing of data and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free performance shall include the manipulation of data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.
- 12.25** **Traffic Control.** CM@R will comply with all traffic control provisions as may be provided in the technical specifications.
- 12.26** All required clauses, terms and conditions in A.A.C. R7-2-1087, R7-2-1072 through 1086 and R7-2-1116 F through O, and other applicable laws and regulations, and amendments thereto, are adopted as GSCS Policies and not as Arizona law and included by reference as if fully rewritten herein. In the event of a conflict between the Contract Documents and A.A.C. R7-2-1087, R7-2-1072 through 1086 and R7-2-1116 F through O, as GSCS Policies and not as Arizona law or any other applicable laws or regulations, including those cited herein, and the Contract Documents, GSCS Policies and Procedures and other applicable laws shall control.
- 12.27** By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to GSCS upon request. These warranties shall remain in effect through the term of the contract.
- The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.
- Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA which require compliance with federal immigration laws by public employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
- 12.28** Contractor, by its signature below, warrants and certifies that it has reviewed A.R.S. § 15-512 including but not limited to sub-paragraph H and further warrants that it shall comply and cause any employee, subcontractor or employee of subcontractor to comply with A.R.S. § 15-512 and as set forth in 12.22 *et seq*, herein all as adopted GSCS Policies and not Arizona law.

As required by GSCS Policy, the CM@R agrees by entering into and accepting this Contract that no employee or Subcontractor of the CM@R who is required to register as a sex offender pursuant to Navajo or Federal law, will work on GSCS premises or equipment at any time when GSCS students are or are reasonably expected to be, present. The CM@R further agrees by acceptance of this agreement that a violation of this condition shall be considered a material breach and may result in a cancellation of the agreement at GSCS's discretion.

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**GREASEWOOD SPRINGS COMMUNITY SCHOOL ("GSCS")**

**[PROJECT NAME]**

**Project No. 0001-2024, Contract No. 01-24**

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

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

Guaranteed Maximum Price No. --

**(Written Amount)**

\$-----

GREASEWOOD SPRINGS COMMUNITY SCHOOL \_\_\_\_\_

an \_\_\_\_\_

\_\_\_\_\_, Principal

By: \_\_\_\_\_

\_\_\_\_\_, Principal

By: \_\_\_\_\_

\_\_\_\_\_, President

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

RECOMMENDED:

By: \_\_\_\_\_

(Corporate Seal)

APPROVED BY GSCS

DATE:

## EXHIBIT A - PROJECT DESCRIPTION

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

CM@R Design Phase and Construction Services as necessary and/or as set forth in the Contract Documents for the construction of the [Project Name] to be located in \_\_\_\_\_ Arizona, all as may be more fully set forth in the documents provided pursuant to the Contracts herein.

The full street or physical address of the Project is:

\_\_\_\_\_  
Greasewood Springs Community School  
\_\_\_\_\_  
Highway 15  
\_\_\_\_\_  
Greasewood Springs, AZ  
\_\_\_\_\_



## EXHIBIT B – APPROVED GMP PROPOSAL

## EXHIBIT C – TECHNICAL SPECIFICATIONS

## **EXHIBIT D – CONSTRUCTION DRAWINGS**

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

- Design Professional
- GSCS Project Manager
- CM@R Contractor