

June 16, 2026

Members of the California Water Commission

California Water Commission

Via EMAIL: [cwc@water.ca.gov](mailto:cwc@water.ca.gov)

Dear Commissioners,

The purpose of this letter is to update the California Water Commission regarding significant recent developments on the Sites Reservoir project (“Project”), which should affect the Commission’s overall evaluation of the Project, its awarding body, the Sites Project Authority (“Authority”), and the Authority’s chosen Construction Manager at Risk for the Project, Barnard Construction, Inc. (“Barnard”). Specifically, this letter explains that the Authority has made several concerning acts or omissions regarding the Project, including: failing to properly secure the water rights for the Project, holding closed-door discussions regarding the Project in violation of California’s open meetings law, allowing Barnard to shift risk onto the Authority, and yielding too much authority to Barnard to negotiate a project labor agreement (“PLA”) for the Project.

The North Coast States Carpenters Union (“NCSCU”) respectfully asks the California Water Commission to table June 17, 2026 Agenda Item 11 - Water Storage Investment Program: Sites Project Consideration of Supplemental Funding Determination (Action Item), as California taxpayers need assurances that this Project is being managed responsibly and the monies in question will be spent in fiscally prudent ways.

### **Water Rights Issues**

In May 2022, the Sites Project Authority applied to the California State Water Resources Control Board for a permit to divert 1.5 million acre-feet of water per year into its proposed Sites Reservoir.

In March 2026, nearly four years later, the California State Water Resources Control Board released its draft decision regarding the Sites Reservoir Project, which states:

“As with other discretionary decisions in administering water rights, the Board shall consider the public interest when determining whether to approve a petition for assignment or release from priority.” (p. 30)

The draft decision conditionally approved 986,000 acre-feet of water per year – reducing the amount of water to be collected per year by more than 1/3<sup>rd</sup> from what was requested. [Attachment A]

While Authority staff have indicated they will appeal the draft decision and continue to pursue the 1.5 million acre-feet per year, we encourage commissioners to read the draft decision, and take into consideration such analysis as:

“The Authority did not consider the demands of water right holders downstream” (p. 49);

“(S)ignificant problems with the modeling the Authority conducted to analyze the impact of its proposed operations on water levels in the southern Delta, rendering the results unreliable” (p. 55); and

“(I)nsufficient” analysis of the potential temperature impacts (p.121).

These observations by the Water Resources Control board alone should give this body pause. But that they are in keeping with other concerning actions and omissions by the Authority staff, as outlined below, warrants item 11 to be tabled and an independent audit of the project to be triggered.

### **Brown Act Violations**

In February 2026, the NCSCU sent the Authority a letter demanding the Authority cease and desist from its violations of California’s open meetings law, the Ralph M. Brown Act. Specifically, the letter explained that members of the public had been kicked out of two Authority committee meetings earlier that month and therefore blocked from asserting their rights under state law to participate and observe public meetings. [Attachment B]

During the Authority Board meeting on March 20, 2026, Authority staff and various committee members acknowledged the regular practice at Authority committee meetings of removing individuals from online meetings when they did not introduce themselves or acknowledge questions from committee members or staff. They rationalized the practice, which is a clear violation of the Brown Act, as an attempt to protect themselves from potential would-be hackers.

After the Authority’s’ legal counsel explained how the practice did violate the Brown Act, the Authority Board still unanimously voted to approve the Authority Board Chair’s response to the cease and desist with a letter disputing some of the claims made by the North Coast States Carpenters Union and, without admitting any violation of the Brown Act, stating:

“the Authority hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action identified in your February 25, 2026, letter as described above, to the extent such actions do in fact constitute Brown Act violations.” [Attachment C]

## **Barnard Shifted Risk In Proposal**

A side-by-side comparison of proposals submitted by Barnard [Attachment D] and Kiewit Corporation (“Kiewit”) [Attachment E] to the Authority for the CMAR preconstruction contract provides a stark contrast in terms of risk and responsibility.

The proposed changes Barnard suggested, some of which were incorporated by the Authority, to the CMAR contract were 4 times the amount of Kiewit. And, unlike Kiewit’s proposal, Barnard repeatedly referred to portions of the contract as “unfair shifting of risk” or “unfair allocation of risk.”

These occasionally successful contractual provisions that shift risk from the CMAR onto the awarding body – and by extension California taxpayers – are disconcerting at best and raise questions of the overall fiscal responsibility of this Project as it is currently structured and staffed.

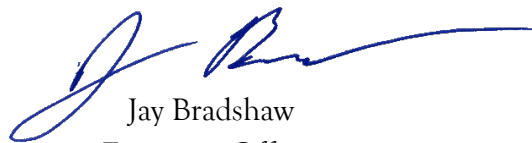
## **Ceding Too Much Control Over Project Labor Agreement to Barnard**

During previous California Water Commission meetings, Commissioners have asked Authority staff about its PLA negotiations. Specifically, Commissioners asked why the negotiations were between labor organizations and the CMAR, rather than the with the Authority as the awarding body – which is the far more common practice. In Authority committee meetings, Authority staff have repeatedly acknowledged that they lacked the experience or understanding of PLA negotiations and felt more comfortable giving that responsibility to Barnard. By ceding control of the PLA negotiations to Barnard, the Authority lost the power to represent the best interests of Californians in dictating and demanding working rules and conditions of how the project will be constructed.

## **Conclusion**

In our previous letter, dated February 17, 2026, the NCSCU recommended the California Water Commission initiate an external audit of the Sites Project Authority’s CMAR contract file, as envisioned in Public Contract Code section 20928.2(g)(6). Given the aforementioned missteps by the Authority and its staff, the NCSCU urges the California Water Commission table Item 11 and direct Commission staff to investigate and report on options for an independent external audit of the to-date actions, behaviors, decisions of the Sites Project Authority concerning the Reservoir Project.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jay Bradshaw", is positioned above the printed name and title.

Jay Bradshaw  
Executive Officer

# Attachment B

May 13, 2026

**VIA U.S. Mail & Email**

Board of Directors  
Sites Project Authority  
122 Old Highway 99 West  
Maxwell, CA 95955  
[info@sitesproject.org](mailto:info@sitesproject.org)

Wendy Ambriz  
Board Clerk  
Sites Project Authority  
P.O. Box 517  
Maxwell, CA 95955  
[wambriz@sitesproject.org](mailto:wambriz@sitesproject.org)

**RE: Sites Project Authority Must Cease and Desist Closed Session Violations of California's Ralph M. Brown Act**

Dear Sites Project Authority:

We write this letter on behalf of our client, the North Coast States Carpenters Union ("Carpenters"), to inform the Sites Project Authority ("Authority") that it is once again violating fundamental closed session requirements under California's open meetings law, the Ralph M. Brown Act, Government Code § 54950 *et seq.* ("Brown Act").

As we stated in our February 25, 2026 cease-and-desist letter to the Authority, the Brown Act was enacted to provide transparency and public access to deliberations and actions of local agencies. The foundational principle of the Brown Act is that members of the public have the right to understand, question, and contribute to the decision-making processes of local legislative bodies. The Authority's Board and standing committees are local legislative bodies under the Brown Act that must comply with the Act's requirements.<sup>1</sup>

Since sending our prior cease-and-desist letter, the Carpenters have learned that the Authority has violated the Brown Act in another way: by repeatedly deliberating in closed session on matters that the Brown Act requires to be heard by the public in open session. By this letter, the Carpenters formally request that the Authority cease and desist from violating the Brown Act by hiding its discussions from public view and scrutiny.

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<sup>1</sup> <https://sitesproject.org/sites-project-authority/>; *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force*, 134 Cal.App.4th 354 (2005).

**I. The Authority Board and Reservoir Committee Have Violated the Brown Act by Holding Closed Sessions for Matters Required to Be Discussed In Open Session**

The California Legislature enacted the Brown Act with the intent that public agencies take their actions and deliberations openly.<sup>2</sup> The goal of the Brown Act is to prevent “secret legislation,” as:

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.<sup>3</sup>

Thus, the Brown Act sets forth a general rule that local legislative bodies, including boards and standing committees, discuss and deliberate in open session.<sup>4</sup>

The Brown Act does allow for closed sessions to be held as an exception to this general rule, but only in special and limited circumstances authorized by its specific provisions.<sup>5</sup> Circumstances giving rise to allowable closed session topics include specific circumstances involving negotiations regarding real property,<sup>6</sup> potential litigation against the agency or to be initiated by the agency,<sup>7</sup> existing litigation,<sup>8</sup> certain actions involving public employees,<sup>9</sup> and other less commonly used exceptions.<sup>10</sup> “Statutory exceptions authorizing closed sessions of legislative bodies are construed narrowly, and the Brown Act ‘sunshine law’ is construed liberally in favor of openness in conducting public business.”<sup>11</sup>

If a legislative body was required to deliberate in open session but did so in closed session, remedies under the Brown Act include nullification of actions taken and injunctive relief, and potential attorney fees for prevailing parties.<sup>12</sup>

As explained below, the Reservoir Committee/Authority Board has violated the Brown Act by holding secret, closed sessions on matters that must lawfully be discussed publicly in open session.

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<sup>2</sup> Cal. Gov. Code § 54950.

<sup>3</sup> Cal. Gov. Code § 54950.

<sup>4</sup> Cal. Gov. Code §§ 54950, 54952.

<sup>5</sup> Cal. Gov. Code § 54962.

<sup>6</sup> Cal. Gov. Code § 54956.8.

<sup>7</sup> Cal. Gov. Code § 54956.9(a).

<sup>8</sup> Cal. Gov. Code § 54956.9(d)(1).

<sup>9</sup> Cal. Gov. Code § 54957(a).

<sup>10</sup> See Cal. Gov. Code §§ 54956.86, 54956.87, 54956.95, 54957.8, and 54957.10.

<sup>11</sup> Cal. Const. Art. I, § 3(b)(2); *Page v. MiraCosta Community College Dist.*, 180 Cal.App.4th 471, 501 (2009).

<sup>12</sup> Cal. Gov. Code §§ 54960.1(a), 54060.2, 54960.5.

**A. Reservoir Committee/Authority Board Meeting Violates Brown Act by Inappropriately Holding Closed Session Regarding “Public Employee Appointment (Gov. Code Section 54957). Title: CMAR Contractor”**

Our first concern is with Agenda Item 5.5 under the closed session section of the November 21, 2025 Reservoir Committee/Authority Board Meeting. The item is listed as “**Public Employee Appointment (Gov. Code Section 54957). Title: CMAR Contractor.**”

Based on the Carpenters’ review, the Reservoir Committee/Authority Board has violated the Brown Act by deliberating on this item in secret, closed session, as the item does not fit within a specified Brown Act closed session exception to the open meeting rule.

The agenda item cites Government Code § 54957, but this section of the Brown Act is inapplicable. Government Code § 54957 permits “holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee.”<sup>13</sup> The section defines “employee” to mean “an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body, or other independent contractors . . . .”<sup>14</sup> Here, the item references the Authority’s selection of Barnard Construction Company as the Construction Manager at Risk (“CMAR”) for the \$6 billion taxpayer-funded Sites Reservoir Project (“Project”). Barnard Construction Company is a private corporation incorporated in and based in Montana. Barnard Construction Company has contracted with the Authority to perform at least the preconstruction phase of the Project, and accordingly is a private third party in business with the Authority. Under no reasonable interpretation of Government Code § 54957 is Barnard Construction Company an “employee” of the Authority.

Further, no other closed session exception to the Brown Act’s open meeting rule applies to the Authority’s selection of Barnard Construction Company as the private CMAR contractor for the Project. This makes sense, as the reason for our state’s public contracting laws are to ensure that public contracts are awarded openly and fairly to benefit taxpayers, who are the ultimate beneficiaries of such contracts.<sup>15</sup>

Given the above, we ask that the Authority immediately ensure that the Reservoir Committee/Authority Board deliberate and act on any items regarding Barnard Construction Company publicly, in open session, and refrain from further violations of the Brown Act’s open meeting rules.

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<sup>13</sup> Cal. Gov. Code § 54957(b)(1).

<sup>14</sup> Cal. Gov. Code § 54957(b)(4).

<sup>15</sup> *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 170-71 (1994) (explaining that fair public contracting is meant to “guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent the waste of public funds; and to obtain the best result for the public); *M & B Constr. v. Yuba County Water Agency*, 68 Cal.App.4th 1353, 1360 (1999) (explaining that fair public contracting laws “are passed for the benefit and protection of the taxpaying public”).

**B. Reservoir Committee/Authority Board Meeting Violates Brown Act by Holding Closed Session Regarding “Negotiations concerning water right permit terms and conditions (Govt. Code §54956.9(c) and §54956.9(d)(1))”**

Our second concern is with the recurring Reservoir Committee/Authority Board agenda item listed under closed session as “**Negotiations concerning water right permit terms and conditions (Govt. Code §54956.9(c) and §54956.9(d)(1))**” on many agendas, including: April 2, 2026, February 20, 2026, January 16, 2026, December 19, 2025, November 21, 2025, October 17, 2025, September 19, 2025, August 22, 2025, July 18, 2025, June 20, 2025, May 16, 2025, April 18, 2025, and March 21, 2025. The item is alternatively listed as “**Water Right Application 25517X01 (Govt. Code §54956.9(c) and §54956.9(d)(1))**” on the April 17, 2026 Reservoir Committee/Authority Board agenda.

Based on the Carpenters’ review, the Reservoir Committee/Authority Board has repeatedly violated the Brown Act by repeatedly deliberating on this item in closed session, as the item does not fit within a specified Brown Act closed session exception to the open meeting rule.

First, the agenda item cites Government Code §§ 54956.9(c) and 54956.9(d)(1), but those portions of the Brown Act are inapplicable. Both portions help define terms for the Brown Act’s closed session exception for pending litigation conferences with legal counsel, with the former defining “litigation” as any adjudicatory proceeding “before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator,” and the latter establishing when litigation is “pending.” Here, the language of the water rights permit agenda item does not mention litigation or otherwise suggest that it relates to pending litigation, let alone that it is for the purpose of conferring with legal counsel regarding such litigation. Instead, the item only includes a reference to “negotiations” concerning water rights permit terms and conditions. Additionally, while the Carpenters are aware of the State Water Resources Control Board’s Draft Decision and Draft Water Rights Permit on the Authority’s pending applications for the Sites Reservoir Project, there is currently no adjudicatory proceeding in that matter since those proceedings occurred earlier in the permitting process and are complete. There is therefore no “litigation” in this matter and no need to confer with counsel behind closed doors regarding the permit applications at all. In fact, the State Water Resources Control Board has publicly released its Draft Decision and Draft Water Rights Permit and is actively seeking public comment at this stage of the permitting process precisely because the adjudicatory proceedings are complete and the Project is of particular statewide public importance given its scope and purpose. Thus, the Brown Act sections cited by the Reservoir Committee/Authority Board for this agenda item do not support this item being held in closed session.

Second, the only other Brown Act closed session exception that could possibly apply, based on the word “negotiations,” applies only in certain narrow circumstances inapplicable here. Government Code § 54958.6 permits local legislative bodies to “hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency,” but only “to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.”

Here, the language of the agenda item does not suggest that the purchase, sale, exchange or lease of real property is at issue. Even if water right permits were somehow linked to a real property transaction, the language of the agenda item does not suggest the Reservoir Committee/Authority Board is meeting with a negotiator at all, let alone to grant the negotiator authority regarding the price and terms of payment for any related real property transaction. When the Authority has relied on Government Code § 54956.8 in the past (for example, November 21, 2025 Reservoir Committee/Authority Board Items 5.2, 5.3, and 5.4, “Conference with Real Property Negotiators (Gov. Code. § 54956.8)”), it has properly cited the relevant statutory exception, described the item using “conference,” “real property,” and “negotiators,” and identified the Authority’s negotiators, the negotiating party on the other side, and what terms were under negotiation—none of which it did here. Finally, if Government Code § 54958.6 were the relevant exception, the Brown Act requires that “prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate,” and based on the Carpenters’ search of agenda items for the past several years, there has been no related open session item.

Given the above, we ask that the Authority immediately ensure that the Reservoir Committee/Authority Board deliberate and take action on the water right application and permit terms and conditions item publicly, in open session and refrain from further violations of the Brown Act’s open meeting requirements.

## II. Conclusion

This letter has explained that the Reservoir Committee/Authority Board has repeatedly violated the Brown Act’s open meeting requirements by improperly meeting in closed session outside the public view.

The Carpenters advise the legislative bodies of the Sites Project Authority to use the Brown Act’s template language for closed session agenda items, found in Government Code § 54954.5.<sup>16</sup> Although the language is not mandatory, it is best practice and a safe harbor given agencies that substantially comply with such language will not be found in violation of the Brown Act’s open session requirements.<sup>17</sup> The Authority is plainly aware of the Brown Act’s recommended template language, as the Authority’s legislative bodies correctly utilize such language on some agenda items (e.g. November 21, 2025 Reservoir Committee/Authority Board Items 5.2, 5.3, and 5.4, as noted above). The Carpenters recommend that the Authority ensure that its legislative bodies use the template language for all closed session items.

Pursuant to the Brown Act, please respond to this letter by **June 16, 2026** with an “unconditional commitment” to cease and desist from the Brown Act violations identified herein.<sup>18</sup>

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<sup>16</sup> Cal. Gov. Code § 54954.5.

<sup>17</sup> Cal. Gov. Code § 54954.5.

<sup>18</sup> Cal. Gov. Code § 54960.2(c).

Sites Project Authority

May 13, 2026

Page 6

The Carpenters look forward to your prompt attention to this important matter. In the meantime, and as always, the Carpenters will keep participating in the Authority's public meetings, particularly those concerning the Sites Reservoir Project and Barnard Construction. In so doing, the Carpenters will continue to monitor the Authority's compliance with the Brown Act and other laws for the benefit of carpenters and other members of the taxpaying public.

Please contact me at [amatsuoka@shanleyapc.com](mailto:amatsuoka@shanleyapc.com) or 213-488-7782 with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Amatsuoka" with a long horizontal flourish extending to the right.

Andrea C. Matsuoka

ACM/lw

SHANLEY

A PROFESSIONAL CORPORATION

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Los Angeles, CA • Sacramento, CA • Kent, WA

# Attachment C



March 20, 2026

Via Email  
amatsuoka@shanleyapc.com

Andrea C. Matsuoka  
Shanley, A Professional Corporation  
4421 Pell Dr., Suite E  
Sacramento, CA 95838

**Re: Response to Brown Act Compliance Notifications**

Dear Ms. Matsuoka,

This letter follows your letter dated February 25, 2026 (and received by the Authority on March 9, 2026) alleging violations of the Brown Act (Gov. Code § 54950 *et seq.*), your follow-up email dated March 13, 2026, and the Authority's initial response dated March 16, 2026.

In your February 25<sup>th</sup> letter, you allege that the following past actions constituted violations of the Brown Act:

- I. Sites Coordination Committee Violated Brown Act by Kicking Out Member of the Public From February 11, 2026 Committee Meeting
- II. Sites Legislative & Outreach Committee Violates Brown Act by Kicking Member of Public Out of February 12, 2026 Committee Meeting
- III. The Authority's Standing Committees Additionally Violated the Brown Act by Failing to Comply with the Act's Agenda Description Requirement

For reasons explained in the Authority's March 16<sup>th</sup> response (copy enclosed), the Authority's Committees did not improperly exclude any member of the public from open session. They excluded all members of the public from *closed* session, as authorized by the Brown Act.

Regarding the agenda items, the case you cite in your letter, *San Diegans for Open Gov't v. City of Oceanside* (4 Cal.App.5th 637), is not analogous. The *San Diegans* Court interpreted the Brown Act by evaluating situations in which legislative bodies took actions on significant matters, such as school closures, without indicating to the public that such actions were to be considered. As the *San Diegans* Court acknowledge, "it is also clear

that so long as notice of the essential nature of the matter an agency will consider has been disclosed in the agency's agenda, technical errors or immaterial omissions will not prevent an agency from acting." (*San Diegans* at 644, 645.) Without diminishing the importance of also properly noticing discussion items, we note that the Authority's Committees are advisory only and were therefore not taking any action. Further, the Authority maintains that in the context of each Committee's jurisdiction, the agenda items were sufficient to provide the public with notice of matters to be discussed during those meetings.

With the foregoing clarifications in mind, and in order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Authority hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action identified in your February 25, 2026, letter as described above, to the extent such actions do in fact constitute Brown Act violations. This clarification is important, as the Authority cannot, for example, unconditionally commit not to exclude members of the public from closed session.

The Authority may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this letter, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Sincerely,

A handwritten signature in black ink that reads "Fritz Durst". The signature is written in a cursive style with a large, prominent "D" at the end.

Fritz Durst  
Authority Board Chair

Enclosure

cc: Board of Directors, Sites Project Authority  
Reservoir Committee, Sites Project Authority  
Jerry Brown, Executive Director

# Attachment D

**Form I**  
**Suggested Material Comments to the Draft CMAR Contract**

	<b>Describe the proposed Draft CMAR Contract modification, citing the section or subsection.</b>	<b>Describe the rationale for the proposed change:</b>
1	Agreement, Section 2.1(f)(ii) “CMAR shall <del>not</del> be entitled to <u>recover</u> any costs <u>or time impacts</u> due to any impacts, disruption, or delays occurring during performance of Preconstruction Services. If Sites Authority or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during Preconstruction Services, Contractor’s <del>sole</del> remedy shall be an adjustment of the <u>cost and</u> time period for performance of Preconstruction Services. Any delay that occurs during the Preconstruction Phase shall have no impact on Sites Authority’s right to terminate Preconstruction Services at any time as provided in the General Conditions.”	If Sites Authority impacts CMAR’s work, CMAR is entitled to recover for those time and monetary impacts.
2	Agreement, Section 2.2(b)(i) “The Guaranteed Completion Date will be established in the first RGMP and it shall run from the Notice to Proceed for that Reservoir Work Package even if issued prior to completion of the 100% Design Documents and may be adjusted through the negotiations of future RGMPs.”	It is unrealistic to establish the Guaranteed Completion Date in the first RGMP. There are too many unknown factors, including when Sites Authority will release the other work packages, to establish a Guaranteed Completion Date with any level of accuracy. A more realistic approach is appropriate.
3	Agreement Section 3.1(a)(ii) The billing rates shall be inclusive of all costs, including overhead and profit. The billing rates for the Phase 1B Services will be adjusted yearly based on [INSERT], subject to a yearly cap of [INSERT]. CMAR will be reimbursed for direct <b>and indirect</b> costs not covered by the billing rates. The reimbursable direct <b>and indirect</b> costs are identified in CMAR’s Cost Proposal Form or Task Order.	Costs such as office expenses, which may be considered indirect costs should be included outside of the rates when more information is known for an accurate determination of the costs.
4	Agreement, Section 3.2(a) “CMAR’s compensation for Construction Services shall be a not-to-exceed Reservoir Package GMP, made up of individual RGMPs, as further described in the General Conditions, and subject to, the limitations set forth below and as indicated in the Contract Documents.”	This provision and other CMAR compensation provisions in the Contract Documents do not address cash positivity/neutrality or a shared risk approach, which we wish to discuss with Sites Authority.
5	General Conditions (“GC”), Section 1.2	Insert a Change in Law provision.
6	GC, Section 1.2.A (23) “ <u>Critical Supply Shortage</u> – An unusual shortage in materials that is (a) supported by documented proof that CMAR made <del>every effort</del> <u>commercially reasonable efforts</u> to obtain such materials from all available <u>commercially reasonable</u> sources; (b) such shortage is due to the fact that such	The original language was an unreasonable standard.

	<p>materials are not physically available from single or multiple sources or could have been obtained only at <del>exorbitant</del> prices <del>entirely</del> inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by CMAR at the time it entered into a Reservoir Work Package Amendment. <u>Typical M</u>market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.”</p>	
7	<p>GC, Section 1.2.A (32) <u>Force Majeure Event</u> – An event that materially affects a Party’s performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of Governmental Bodies (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by Governmental Bodies that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; <u>and</u> (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of CMAR and its Subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers.; <del>and (6) a Critical Supply Shortage. For purposes of this section, “orders of Governmental Bodies,” includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of Sites Authority in its capacity as a public agency.</del></p>	<p>Any action of the Sites Authority that impacts CMAR’s work or a Critical Supply Shortage are compensable events.</p>
8	<p>GC, Section 2.1.A <u>Examination of Project Site</u>. As part of the Preconstruction Services and throughout the Construction Services, as land ownership and permit constraints allow, CMAR shall inspect and become familiar with the Site, its physical condition relevant to the obligations of CMAR pursuant to the Contract, including surface <del>and subsurface conditions, normal and usual soil</del> conditions, roads, Underground Facilities, topographical conditions and air and water quality conditions and shall, among other things, review the Design Documents relative to the Site. CMAR shall be familiar with all local and other conditions which may be material to CMAR’s performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor); CMAR shall have</p>	<p>CMAR will generally be familiar with the site, but will not have a full understanding of the subsurface conditions. Given the immensity of the site, the geotechnical work necessary to adequately disclose subsurface conditions would be extensive and expensive. Further, CMAR does not warrant that the site is suitable for a project designed by others. This warranty should come from Sites Authority’s design professionals.</p>

	<p>received and reviewed all information regarding the Site provided to or developed by it in connection with the Preconstruction Services pursuant to the Contract;<del> and CMAR shall have made all other Site investigations that it deems necessary to make a determination as to the suitability of the Site and to submit a Reservoir Work Package Proposal to Sites Authority in accordance with the Contract Documents. CMAR's Reservoir Work Package Proposal shall serve as a representation by CMAR that, based on the foregoing, that the Site constitutes an acceptable and suitable site for the Work and that the Work can be performed on the Site within the RGMP and in accordance with the Contract Documents, including the schedule requirements of the Contract.</del></p>	
9	<p>GC 2.1.B <u>Examination of Contract Documents.</u> Before commencing any portion of the Construction Services, CMAR shall, in addition to the Preconstruction Services, carefully examine the Site, all applicable Contract Documents, the Design Documents, and other information given to CMAR as to materials and methods of construction and other Project requirements. CMAR shall immediately notify Sites Authority of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation <u>that CMAR discovers</u>. If CMAR <u>knowingly</u> performs, permits, or causes the performance of any Work which <u>CMAR knows</u> is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, CMAR shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall CMAR or any Subcontractor proceed with Work if uncertain as to the applicable requirements.</p>	<p>The modifications are an appropriate risk profile for errors, inconsistencies, ambiguities, etc. in the design and construction documents prepared by the Sites Authority's design professionals.</p>
10	<p>GC 2.1.D <u>Quality of Parts, Construction and Finish.</u> <u>CMAR will use the care and skill ordinarily used by members of the construction industry practicing similar services under similar conditions at the same time and locality of the Project</u> <del>All parts of the Work shall be of the best quality of their respective kinds</del> and CMAR <del>must use all diligence to</del> <u>will be diligent in informing</u> itself fully as to the required construction and finish.</p>	<p>This is an industry appropriate standard of care.</p>
11	<p>CG 3.1 Indemnification  A. <u>Indemnification.</u> <del>To the fullest extent permitted by law,</del> CMAR shall immediately defend <del>(with counsel of Sites Authority's choosing),</del> indemnify and hold harmless Sites Authority, its officials, officers, employees, agents, and authorized volunteers, and each</p>	<p>This is an industry appropriate indemnity provision.</p>

of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, ~~of every kind or nature whatsoever, but not limited to,~~ injury to or death, including wrongful death, of any third party person, and damages to or destruction of property of any person third party, ~~arising out of, related to, or in any manner directly or indirectly connected with the Preconstruction Services, Construction Services, Work or the Contract, including claims made by Subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of Sites Authority or its officials, officers, employees, agents, or authorized volunteers (including passive negligence), except such loss or damages caused by the sole negligence or willful misconduct or active negligence of Sites Authority or its officials, officers, employees, or authorized volunteers, to the extent caused by the~~ negligence or willful misconduct of CMAR.
2. ~~CMAR's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from CMAR's Work during the course of construction of the improvements or after the Project is complete, as the result of defects or negligence in CMAR's construction of the Work.~~
3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, ~~of every kind or nature whatsoever, arising out of, resulting from, or on account of the~~ to the extent caused by CMAR's violation of any Applicable Law, compliance with which is the responsibility of CMAR.
4. ~~Any and all losses, expenses, damages (including damages to the Project itself), attorney's fees, and other costs, including all~~

	<p><del>costs of defense which any of them may incur with respect to the failure, neglect, or refusal of CMAR to faithfully perform the Preconstruction Services or Construction Services and all of CMAR's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.</del></p> <p><u>Defense.</u> CMAR shall immediately defend, at CMAR's own cost, expense and risk, <del>with the counsel of Sites Authority choosing,</del> any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Sites Authority or its officials, officers, employees, agents, or authorized volunteers <u>to the extent such claims, demands, causes of action, costs, expenses, injuries, losses or liabilities are the result of CMAR's negligence or willful misconduct.</u> <del>CMAR shall pay and satisfy any judgment, award or decree that may be rendered against Sites Authority or its officials, officers, employees, agents, or authorized volunteers, in any such suit, action or other legal proceeding. CMAR shall reimburse Sites Authority and its officials, officers, employees, agents, and authorized volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.</del></p>	
12	GC 3.2 and 3.3 Insurance	The insurance program for the Preconstruction and Construction Services should be subject to the terms and conditions, deductibles, limits and sub-limits to the extent commercially available in the insurance market at the time of marketing and placement. CMAR should have the ability to negotiate the final insurance program and requirements.
13	GC 3.2.B <u>Additional Insureds; Waiver of Subrogation.</u> Sites Authority, its officials, officers, employees, agents and authorized volunteers shall be named as additional insureds CMAR's and its Subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for CMAR's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for Subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage).	CMAR is providing and pricing the contractually mandated insurance policies and limits. It is unfair to then require CMAR to provide insurance in excess of the contractually mandated policy limits.

	<p><del>Notwithstanding the minimum limits set forth in the Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds hereunder.</del> All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against Sites Authority, its officers, officials, agents, employees or volunteers or shall specifically allow CMAR - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. CMAR hereby waives its own right of recovery against Sites Authority, and shall require similar written express waivers and insurance clauses from each of its Subcontractors. Copies of these waivers shall be submitted to Sites Authority prior to commencement of Services.</p>	
14	<p>GC 4.3.A CMAR guarantees that the final cost to construct a Reservoir Work Package shall not exceed the RGMP for that Reservoir Work Package, subject to any additions or deductions as provided in the Contract Documents. <del>Except as otherwise provided in the Contract Documents, CMAR shall assume the risk of all costs in excess of the RGMP in the performance of a Reservoir Work Package and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs.</del> Should CMAR believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the Contract Documents. <del>If the final accounting of the costs for the Reservoir Work Package exceeds the applicable RGMP, including all adjustments to the RGMP in accordance with the Contract Documents, CMAR shall be solely responsible for all costs exceeding such amount.</del></p>	<p>CMAR is not guaranteeing that the design performed by others will result in a fully completed and successfully operational Project. CMAR is constructing the Project based upon the design provided by others. Further, CMAR wishes to explore a share risk approach for cost overruns.</p>
15	<p>GC 4.3.B <del>Each RGMP includes and assumes that from time to time, CMAR will encounter delays and difficult site conditions arising from limited access to work areas, other interference, or conditions at the Site. CMAR assumes full responsibility for its examination, investigation and understanding of the difficulties which may be encountered, and has included in each RGMP the cost of any Construction Services associated with such difficulties.</del> These costs should be presented to Sites Authority through a risk register or other mutually acceptable mechanism as part of the open book pricing for each RGMP. <span style="background-color: yellow;"> </span></p>	<p>CMAR cannot predict and price all delays and difficult site conditions, limited access, other interference, and all other conditions at the Site.</p> <p>CMAR needs to better understand the intent of the highlighted language.</p>

	<p>extent the Design Documents are anticipated to</p>	
16	<p>GC 4.4.A.4 4. Home office overhead percentage applied to Direct Cost, <u>Indirect Cost</u>, and Subcontractor Construction Cost.</p>	<p>Change made to properly reflect application of home office overhead percentage. Further, other provisions need revision to capture that home office overhead is recoverable on all costs including but not limited to Direct Costs, Indirect Costs, Subcontractor costs.</p>
17	<p>GC 4.4.B.1.g <u>Costs Not Considered Direct Cost</u>. Direct Cost do not include the following: Indirect Cost; Subcontractor Construction Cost; CMAR's personnel primarily stationed at CMAR's principal or home offices; material or equipment provided by Sites Authority; cost of CMAR's capital used in the performance of the Construction Services; [REDACTED]; discounts and rebates and the salvage value of tools and equipment consumed in the Work charged by CMAR; [REDACTED]; cost incurred as a result of a delay which does not constitute compensable delay under the Contract Documents; cost incurred in the performance of Preconstruction Services; legal fees and costs related to or arising from disputes between the Parties, including, but not limited to, mediation and litigation fees; any cost not specifically and expressly described as a reimbursable cost; and [REDACTED]</p>	<p>Due to the current pricing model, there should be a contingency that covers re-work. Costs exceeding the RGMP may be Direct Costs or Indirect Costs depending on the cause. Unclear how these costs are to be treated.</p>
18	<p>GC 4.5.B.4 &amp; .5 4. Unless otherwise agreed to by the Parties, if CMAR's pricing is within (TBD)3% percent of Sites Authority's independent cost estimate, CMAR will be allowed to perform the Self-Performed Construction Services. 5. Unless otherwise agreed to by the Parties, if CMAR's pricing for Self-Performed Construction Services is more than (TBD)3% percent higher than Sites Authority's independent cost estimate, the Parties shall meet and confer to compare pricing and attempt to reconcile any differences. If necessary, CMAR will submit revised pricing</p>	<p>Three percent is too low for a comparison with an ICE.</p>

	and an updated Reservoir Work Package Proposal following the meet and confer process.	
19	<p>6. GC 4.5.B.6 CMAR shall submit revised pricing for Self-Performed Construction Services and an updated Reservoir Work Package Proposal as may be necessary to continue negotiations for each Reservoir Work Package. The process shall continue until either:</p> <p>a. Sites Authority agrees to the pricing for the Self-Performed Construction Services; <u>or</u></p> <p><del>b. If Sites Authority's independent cost estimate cannot be reconciled with CMAR's pricing, CMAR agrees to perform the Self-Performed Construction Services at Sites Authority's final independent cost estimate;</del></p> <p><del>b. At Sites Authority's sole discretion, allow CMAR to subcontract the Self-Performed Construction Services pursuant to the subcontracting procedures for Subcontractors in these General Conditions. CMAR shall not be allowed to compete against bidders for the Construction Services. If Sites Authority allows CMAR to subcontract the Self-Performed Construction Services, the minimum and maximum amount of Construction Services required to be performed by CMAR and Key Subcontractors on the Project shall not change.</del></p> <p><u>e.b.</u> At Sites Authority's sole discretion, follow the procedures in <u>Section 4.9(D)</u> of these General Conditions for when the Parties are unable to execute a Reservoir Work Package Amendment.</p>	Forcing CMAR to self-perform at Site's Authority's final independent cost estimate or forcing CMAR to subcontract out all the Reservoir Work Package without compensation are not viable options for the CMAR.
20	<p>GC 4.5.C</p> <p>1. Any and all costs expended by CMAR to price Self-Performed Construction Services shall be tracked and documented by CMAR as part of Preconstruction Services. CMAR shall start tracking and documenting costs when Sites Authority provides approval during Preconstruction Services to start pricing the Self-Performed Construction Services for a Reservoir Work Package Proposal. <del>If Sites Authority selects CMAR to provide Self-Performed Construction Services as part of a Reservoir Work Package Amendment, Sites Authority will compensate CMAR's actual and reasonable costs to price Self-Performed</del></p>	It is unfair to not pay CMAR for pricing the construction services. Forcing CMAR to subcontract all the construction services without compensation is also unfair.

	<p>Construction Services as part of Phase 1 Pricing. <del>However, CMAR shall not be compensated for any costs to price Self-Performed Construction Services if CMAR does not perform the Self-Performed Construction Services.</del></p> <p><del>2. If Sites Authority allows CMAR to subcontract the Self Performed Construction Services pursuant to the subcontracting procedures for Subcontractors in these General Conditions, CMAR shall be responsible for any and all costs related to subcontracting the Self-Performed Construction Services. This includes, but is not limited, costs to prepare bid packages and following the competitive subcontractor procurement procedures.</del></p>	
21	<p>GC 4.8.A.6 CMAR shall <del>not</del> be entitled to an increase of any RGMP, including, but not limited to, any RGMP previously agreed to by the Parties, or any extension of Contract Time related to the Reservoir Work Package Proposal process.</p>	<p>CMAR is entitled to monetary and time relief if the proposal process impacts RGMP pricing or performance.</p>
22	<p>GC 4.9.A.2 If the Reservoir Work Package Proposal does not comply with the requirements of this Contract, Sites Authority's Representative shall provide written notice to CMAR of any additions, corrections or revisions required to achieve such compliance. In such event, CMAR, at its cost and expense and without any increase in the Phase 1 Pricing, shall promptly take all necessary rectification action, making multiple re-submittals if required. <del>The failure of CMAR to provide a Reservoir Work Package Proposal in accordance with the Contract Documents shall be a material breach of this Contract.</del></p>	<p>CMAR is required, at its cost and without any Phase I Pricing increase to resubmit a work package proposal that does not comply with the Contract requirements. This is the process. Making such shortcoming a material breach is inappropriate.</p>
23	<p>GC 4.9.C <u>C. Representations in Reservoir Work Package Amendment.</u></p> <ol style="list-style-type: none"> <li>1. In the event the Parties execute a Reservoir Work Package Amendment, the Reservoir Work Package Amendment shall be deemed to constitute a representation by CMAR that: <ol style="list-style-type: none"> <li>a. It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Reservoir Work Package;</li> <li>b. It has thoroughly reviewed <del>and verified</del> all information provided to or obtained by CMAR through the performance of the</li> </ol> </li> </ol>	<p>Some of the CMAR representations were inappropriate. For example, CMAR does not warrant that the site is an acceptable and appropriate location for the Project. That determination is made by Sites Authority and its design professionals.</p>

Preconstruction Services, including reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site;

- c. It has become familiar with and is satisfied as to the general, local, and Site conditions as disclosed by the Sites Authority or as are observable by site visits that may affect cost, progress, and performance of the Reservoir Work Package;
- d. It is familiar with ~~and is satisfied as to~~ all Applicable Law that may affect cost, progress, and performance of the Reservoir Work Package;
- e. It has considered the information known to CMAR, including information commonly known to contractors doing business in the localities of the Site; information and observations obtained from visits to the Site; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
  - i. The cost, progress, and performance of the Reservoir Work Package; and
  - ii. The means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents.
- ~~f. Based on all of the foregoing and the performance of the Preconstruction Services, the Site constitutes an acceptable and suitable location for performance of the Reservoir Work Package;~~
- ~~g. It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the Reservoir Work Package Amendment for the performance of the Reservoir Work Package for the RGMP on or before the applicable Milestone Date, and in accordance with the other terms and conditions of this Contract;~~
- ~~h.g. The Design Documents are sufficient to enable CMAR to determine the RGMP; and~~
- ~~i.h. Subject to the terms and conditions of this Contract, the RGMP can be completed in~~

	accordance with the Contract Documents for the RGMP by the applicable Milestone Date.	
24	<p>GC 4.9.D</p> <p>D. <u>Failure to Execute Reservoir Work Package Amendment.</u></p> <p>1. If the Parties are unable to reach an agreement on CMAR's Reservoir Work Package Proposal and execute a Reservoir Work Package Amendment, Sites Authority reserves the right, in its sole discretion, to, without limitation, do any of the following (or, a combination thereof):</p> <p>a. Procure that Reservoir Work Package by any other project delivery method, <del>including, but not limited to, hiring a new construction manager. CMAR and Key Subcontractors identified for that CMAR's Reservoir Work Package shall not be entitled to bid or propose on any part of that Reservoir Work Package.</del></p> <p><del>_____</del></p> <p>e-b. <del>Allow</del> CMAR to subcontract the Reservoir Work Package pursuant to the subcontracting procedures for Subcontractors in these General Conditions. CMAR shall not be allowed to compete against bidders for the Reservoir Work Package.</p> <p>d. Terminate CMAR for convenience in accordance with the General Conditions.</p>	<p>There needs to be a defined offramp procedure if Sites Authority exercises the highlighted option.</p> <p>Further, CMAR should not be required to subcontract out all the work without compensation.</p>
25	<p>GC 5.1</p> <p>B. <u>Standard of Care. CMAR will use the care and skill ordinarily used by members of the construction industry practicing similar services under similar conditions at the same time and locality of the Project</u> <del>CMAR shall perform the Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. CMAR warrants that the Services and Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. CMAR shall supervise, inspect, and direct the Services and Work competently and efficiently, devoting such attention thereto and</del></p>	<p>The new language is the industry standard of care and not the unfair heightened standard as proposed.</p>

	<p><del>applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. CMAR shall perform, at its own cost and expense and without reimbursement from Sites Authority, any services necessary to correct errors or omissions which are caused by CMAR's failure to comply with the standard of care provided for herein.</del></p> <p><del>C. <u>Best Efforts.</u> CMAR recognizes the relations of trust and confidence that are established by this Contract, and covenants with Sites Authority to furnish CMAR's best skill and judgment, and to actively cooperate and assist Sites Authority in all matters pertaining to the Project. CMAR agrees to furnish efficient business administration and capable supervision, and to use every effort to keep upon the work an adequate supply of workmen and materials in order to secure its execution in the most expeditious and economical manner consistent with the Contract Documents. CMAR's employees assigned to the Project shall at all times be reasonably satisfactory to Sites Authority.</del></p>	
26	<p>GC 5.8.3 <u>Endangered Plants and Animals.</u> If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, CMAR shall notify Sites Authority's Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Sites Authority's Representative within two (2) Days. CMAR shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by Sites Authority, CMAR will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all Applicable Laws. Any Sites Authority directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by Sites Authority or CMAR due to <del>unreasonable or a</del> <u>knowingly</u> false notification of an endangered plant or animal will be borne by CMAR.</p>	<p>CMAR is to err on the side of notification of endangered plants and animals. Liability should only attach if CMAR provides a knowingly false notification.</p>
27	<p>GC 6.1.A <u>Schedule of Submittals.</u> Within five (5) Days after the</p>	<p>CMAR should not be responsible for any schedule delays resulting from the submittal process,</p>

	<p>Notice to Proceed for each Reservoir Work Package (unless otherwise specified in the Contract Documents), CMAR will prepare and deliver a Schedule of Submittals to Sites Authority that has been fully integrated with the CPM Schedule for that Reservoir Work Package and identifies each Submittal required by the Contract Documents as well as the date on which CMAR will deliver each Submittal to Sites Authority. Each Submittal must be delivered to Sites Authority at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. All submittals shall be prepared by CMAR and delivered to Sites Authority through a document management system designated by Sites Authority. <del>CMAR is responsible for any schedule delays resulting from the Submittal process.</del></p>	<p>particularly if caused <u>by</u> the Sites Authority or its design professionals.</p>
<p>28</p>	<p>GC 6.1.B  B. <u>Submittal Procedures.</u></p> <ol style="list-style-type: none"> <li>1. <u>Procedures.</u> Except as otherwise specifically stated in the Contract Documents, CMAR will abide by the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents: <ol style="list-style-type: none"> <li>a. Submittals must be transmitted electronically.</li> <li>b. Transmittals will be sequentially numbered. CMAR to mark revised Submittals with original number and sequential alphabetic suffix.</li> <li>c. Each Submittal will identify the Project, CMAR, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification section number appropriate to Submittal.</li> <li>d. By transmitting a Submittal, CMAR certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Work and Contract Documents.</li> <li>e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of a completed Work.</li> <li>f. When Submittal is returned to CMAR with comments for revision, CMAR shall promptly address the Sites Authority's Representative's comments and resubmit. CMAR shall identify changes made since previous submission. Delays resulting from incorrect submittals are not the responsibility of Sites Authority.</li> </ol> </li> </ol>	<p>A complete submittal review process with deadlines is necessary.</p> <p>Sites Authority and/or its design professionals should be responsible for CMAR impacts and delays of the submittal process by Sites Authority or its design professionals.</p>

	<p>g. Sites Authority’s review of Shop Drawings shall not relieve CMAR from responsibility for deviations from the Contract Documents unless CMAR in writing, called Sites Authority’s attention to such deviations at time of submission and Sites Authority has taken no exception to the deviation. Sites Authority’s review of Shop Drawings shall not relieve CMAR from responsibility for errors in Shop Drawings.</p> <p>h. Submittals not required by the Contract Documents or requested by Sites Authority will not be acknowledged or processed.</p> <p>i. Incomplete Submittals will not be reviewed by Sites Authority and returned to CMAR. Delays resulting from incomplete Submittals are not the responsibility of Sites Authority.</p> <p><del>j. CMAR shall not be entitled to an increase of the RGMP or any extension of the Contract Time as a result of the Submittal process.</del></p> <p><del>k.j. CMAR shall allow a minimum of Sites Authority shall have a maximum of 14 20 Days for review of Submittals unless otherwise specified in the Contract Documents.</del></p>	
29	<p>GC 6.2.E  <del>Sites Authority’s Review. Sites Authority will review Shop Drawings and Samples in accordance with the Schedule of Submittals. Sites Authority’s review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Sites Authority review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Sites Authority’s review and acceptance shall not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless Sites Authority has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the</del></p>	<p>This should be replaced with a complete submittal review process with deadlines.</p>

	<del>Shop Drawing or Sample.</del>	
30	<p>GC 7.1.B  <u>Necessary Materials, Equipment.</u> Except as otherwise specifically stated in the Contract Documents, CMAR shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Project within the Contract Time. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Construction Services and shall be stored properly and protected as required by the Contract Documents. CMAR shall be entirely responsible for damage or loss by weather or other causes to materials or Work, <u>excepting acts or omissions of Sites Authority, its design professionals or its separate contractors.</u> Materials shall be stored on the Site in such manner so as not to interfere with any operations of Sites Authority or any separate contractor.</p>	Adds clarity to responsibility for materials and the Work.
31	<p>GC 7.1.D  <u>Materials and Equipment Provided by Sites Authority.</u> If applicable and upon written request of CMAR, any materials or equipment furnished by Sites Authority shall be available to CMAR within a reasonable time at the points designated in the Contract Documents. The cost of handling, including loading and unloading, transport, storing, and placing all materials or equipment after they are made available to CMAR shall be considered as included in the RGMP. CMAR shall be responsible <u>to properly store and protect</u> <del>for</del> all material or equipment furnished to CMAR, and deductions will be made from any monies due to CMAR to make good any <del>shortages,</del> damages <u>to the extent caused by CMAR and deficiencies, from any cause whatsoever,</u> which <del>may</del> occur after materials or equipment are provided.</p>	Shortages of owner-supplied equipment is the responsibility of the owner. Deficiencies in owner-supplied equipment are the responsibility of the owner.
32	<p>GC 8.3.B and .C  <u>Verification of Reports and Drawings.</u> As part of the Preconstruction Services and in its capacity as a construction manager, CMAR shall <u>independently verify and confirm the accuracy, completeness, and sufficiency of</u> <del>review</del> any documents furnished by Sites Authority, and shall promptly report in writing to Sites Authority any error, omission, or insufficiency in such documents that CMAR discovers.  <u>Unverified Reports and Drawings.</u> For “technical data” in reports and drawings provided to CMAR, but</p>	CMAR is entitled to rely upon the documents and information Sites Authority provides to CMAR and such documents are Contract Documents.

	<p>not verified during the Preconstruction Phase, CMAR may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly <del>not</del> created or obtained to evaluate or assist in the evaluation of constructability, and are <del>not</del> Contract Documents.</p>	
<p><b>33</b></p>	<p>GC 8.3.D          Interpretation of Reports and Drawings. CMAR shall make its own interpretation of the “technical data” in the reports and drawings and shall be solely responsible for any such interpretations. <del>Except for reliance on the accuracy of such “technical data,”</del> CMAR may not rely upon or make any claim against Sites Authority, Sites Authority’s Representative, or A/E of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:</p> <ol style="list-style-type: none"> <li><del>1. The completeness of such reports and drawings for CMAR’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;</del></li> <li><del>2. Other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or</del></li> </ol> <p>Any CMAR interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.</p>	<p>CMAR is entitled to rely upon the documents and information Sites Authority provides to CMAR.</p>
<p><b>34</b></p>	<p>GC 8.7</p> <ol style="list-style-type: none"> <li>A. Preconstruction Services and Differing Site Conditions. CMAR shall review all available information, including the Design Documents, and undertake all soils and other site conditions investigations required with respect to the Site during performance of the Preconstruction Services as required pursuant to the Contract Documents.</li> <li>B. CMAR shall as soon as reasonably practicable under the conditions, but in no case longer than three (3) Days, and before the excavation is further disturbed, notify Sites Authority in writing of any of the following conditions:             <ol style="list-style-type: none"> <li>1. Material that CMAR believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I,</li> </ol> </li> </ol>	<p>Deletions because of the unfair burden it places on CMAR re DSCs.</p>

Class II, or Class III disposal site in accordance with provisions of existing law;

2. Subsurface or latent physical conditions at the Site differing from those indicated by information made available to CMAR prior to the applicable Reservoir Work Package Amendment; or
3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

C. The written notice from CMAR shall describe the specific condition encountered ~~and demonstrate that a differing site condition exists, why CMAR could not reasonably have worked around the differing site condition, and how the differing site condition adversely impacted the applicable RGMP or Contract Time.~~

D. Sites Authority shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in CMAR's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in these General Conditions.

E. In the event that a dispute arises between Sites Authority and CMAR as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in CMAR's cost of, or time required for, performance of any part of the Work, CMAR shall ~~not be excused from any scheduled completion date provided for by the Contract, but shall~~ proceed with all Work to be performed under the Contract. CMAR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

F. Notwithstanding anything in this Section 8.7, Sites Authority shall not compensate CMAR for additional costs or time for conditions of which CMAR had knowledge of as of an RGMP, including conditions that could reasonably have been known, discovered or

	<p>revealed as a result of the examinations, investigations, explorations, tests or studies of the Site required to be performed by CMAR as part of the Preconstruction Services or that CMAR could have reasonably inferred based on its experience and expertise unless CMAR could not have been aware of a particular condition at the Project Site despite diligent performance of its Preconstruction Services and other contractual responsibilities.</p>	
<p>35</p>	<p>GC 9.3.B  <u>CMAR's Responsibility for Work.</u> Responsibility for, and security of, all Work and materials related to CMAR's Work is the responsibility of CMAR until final acceptance of CMAR's Work by Sites Authority. Sites Authority shall <del>not</del> be held responsible for the care or protection of any material or parts of the Work prior to final acceptance <u>where Sites Authority has taken beneficial use or occupancy of that part of the work.</u> CMAR shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by CMAR <u>excepting injury or damage caused by Sites Authority, its agents or its separate contractors.</u> CMAR shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work <u>to the extent caused by CMAR</u> before its completion and acceptance. In the event of damage proximately caused by an Act of God, Sites Authority will pay for repair or restoration to damaged Work <del>in excess of 5% of the total Reservoir Package GMP unless Sites Authority has required CMAR to obtain insurance to indemnify Sites Authority for any damage to the Project caused by an Act of God</del> <u>except as covered by insurance.</u></p>	<p>Sites Authority is responsible for any injury or damage that it causes. Further, requiring CMAR to pay the costs to repair Acts of God up to 5% of the Reservoir GMP Package is an unfair allocation of risk.</p>
<p>36</p>	<p>GC 9.4.F  <u>Disputes Associated with Separate Work.</u> If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, Sites Authority shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. <u>If CMAR is impacted by Sites Authority's decision, it shall be entitled to an extension of Contract Time and an increase in contract</u></p>	<p>This should be a compensable event if Sites Authority's decision impacts CMAR.</p>

	<a href="#">price.</a>	
37	<p>GC 10.2.A</p> <p><del>Time for Completion.</del> The Contract Time shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and, in both cases, shall be completed within the Contract Time. <del>Sites Authority is under no obligation to consider early completion of the Work and Contract Time shall not be amended by Sites Authority's receipt or acceptance of CMAR's proposed earlier completion date. Any difference in time between CMAR's early completion and the Contract Time shall be considered a part of the Project float. CMAR shall not be entitled to compensation, and Sites Authority will not compensate CMAR, for delays which impact early completion. CMAR shall not, under any circumstances, receive additional compensation from Sites Authority (including but not limited to direct, indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by CMAR and the Contract Time.</del></p>	Sites Authority is responsible for delays it causes to CMAR's work.
38	<p>GC 10.2.F</p> <p><del>F. No Damages for Reasonable Delay.</del></p> <p><del>1. Sites Authority's liability to CMAR for delays for which Sites Authority is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall Sites Authority be liable for any costs which are borne by CMAR in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.</del></p> <p><del>2. Damages caused by unreasonable Sites Authority delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages. This includes the following allowable costs:</del></p> <p><del>a. Those actual necessary costs of idle time of construction equipment, idle time of workers, moving of construction equipment, and hauling of materials and equipment which are incurred solely by reason of the delay and which could not have been avoided by the judicious handling of forces, construction equipment and plant;</del></p> <p><del>b. Indirect Costs that are incurred solely by reason of the delay and extension of the Critical Path; and</del></p>	Sites Authority is responsible for impacts due to its delays regardless of whether those delays are claimed to be reasonable or not.

	<p><del>e. CMAR's Self Performance Profit and CMAR's Subcontractor Profit, as applicable, on the costs allowed above.</del></p>	
39	<p>GC 11.1.B  <u>Excusable Delay.</u> CMAR may request additional time to complete a task or submittal milestone only in the event of an excusable delay. For purposes of this Article, an excusable delay is a delay only to the completion of a Preconstruction Service and caused by the following: (i) the actions of Sites Authority or its employees; (ii) the actions of those in direct contractual relationship with Sites Authority, except for CMAR; (iii) the actions of any Governmental Body having jurisdiction over the Project acting in their role as an authority having jurisdiction; (iv) the actions of any parties not within the reasonable control of CMAR; or (v) a Force Majeure Event. CMAR shall <del>not</del> be entitled to <del>any</del> damages, <u>time impacts, and</u> <del>or</del> costs resulting from an excusable delay.</p>	<p>This is an unfair risk shift.</p>
40	<p>GC 11.1.C.3  To receive an extension of time for the performance of Preconstruction Services, CMAR's request shall include documentation supporting the need for the request, and a time impact analysis showing the impact of the extension on completion of the Preconstruction Services, as well as the impact on potential Work and on the Work as a whole. The time impact analysis shall include options to mitigate the impact to the Critical Path of the Services, including the commencement of Construction Services. The request shall be limited to only the amount of time that is reasonably necessary for CMAR to complete the additional Preconstruction Services. <del>An extension of time shall be a last resort, and shall only be granted if, and to the extent that, CMAR cannot reasonably complete the Preconstruction Services on time, including by expediting the Preconstruction Services, at no additional cost to Sites Authority.</del></p>	<p>Forcing CMAR to accelerate its work without additional compensation is inappropriate.</p>
41	<p>GC 11.2.A.2  <del>CMAR agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum.</del> Subject to Sites Authority approval, each RGMP shall not be modified except in the event of the following circumstances:  (a) Sites Authority directs and authorizes a change which is related solely to discretionary changes by Sites Authority (the foregoing excludes changes</p>	<p>The stated purpose is not accurate. Further, the additional language captures Sites Authority's responsibilities re changes.</p>

	<p>resulting from the acts, omissions or other conduct of CMAR); (b) differing site conditions; (c) changes directed by a Governmental Body with jurisdiction over the Project, or portions thereof, which could not be reasonably foreseen or anticipated by CMAR at the execution of the applicable Reservoir Work Package Amendment; (d) changes necessitated by amendment(s) to or enactment(s) of Applicable Laws which could not be reasonably anticipated or foreseen by CMAR at the execution of the applicable Reservoir Work Package Amendment; (e) changes resulting from emergencies not caused, in whole or in part, by the acts, omissions or other conduct of CMAR or its Subcontractors, employees, agents or representatives; <u>(f) changes resulting from the acts or omissions of Sites Authority, its agents or separate contractors;</u> or <del>(fg)</del> where expressly allowed by the Contract Documents.</p>	
42	<p>GC 11.2.A.3  <del>CMAR has no right to a Change Order for a time extension, extra work, or other costs of any kind whatsoever (including, without limitation, direct and indirect costs, delay and disruption damages, overhead, profit or mark-up) resulting from issues related to: Site conditions that CMAR could have foreseen or discovered prior to Construction Services; constructability issues, including but not limited to construction feasibility, schedule or cost; or where CMAR failed to recommend alternative solutions as part of their Preconstruction Services or Constructability Review.</del></p>	Unfair allocation of risk.
	<p>GC 11.2.B.1          Sites Authority Written Directive. Sites Authority may direct changes in the Work by delivering a written directive. To the extent the written directive results in a change to compensation or time, CMAR must <del>timely</del> request a Change Order <del>and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a written directive, CMAR's failure to timely request a Change Order shall constitute a waiver by CMAR of any adjustment to compensation or time extension for Work performed under the directive. Sites Authority shall not be liable to CMAR for Work performed or omitted by CMAR in reliance on verbal orders. Sites Authority shall have the right to order changes in the Work by a unilateral Change Order setting forth Sites Authority's determination of the reasonable additions or savings in the RGMP or Contract Time.</del></p>	Unfair to allow Sites Authority ability to issue unilateral change order including the monetary and time impacts rather than follow the change order process.

43	<p>GC 11.2.B.2</p> <p>2. <u>CMAR's Notice of Change or Delay.</u></p> <p>a. If CMAR intends to initiate a Change Order Request, CMAR shall provide Sites Authority with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:</p> <ul style="list-style-type: none"> <li>i. If due to differing site conditions, as soon as reasonably practicable under the conditions, but in no case longer than three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.</li> <li>ii. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, but in no case longer than three (3) Days from the date CMAR discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.</li> <li>iii. If due to any other matter that may involve an adjustment to the RGMP or Contract Time, as soon as reasonably practicable under the conditions, but in no case longer than <del>seven (7)</del> <u>fourteen (14)</u> Days from the earlier of the discovery date of the matter or when the matter should have been discovered.</li> </ul> <p>b. To be considered valid and complete, the notice of change or delay shall include a general statement of the circumstances giving rise to the notice of change or delay and a reasonable order of magnitude estimate of the additional costs or time. If the circumstances give rise to both a cost adjustment and time extension, CMAR shall submit the notice of change and notice of delay concurrently.</p>	The notice period was too short.
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44	<p>GC 11.2.B.5</p> <p><del>5. <u>CMAR's Waiver of Further Relief.</u></del></p> <p><del>a. CMAR recognizes and acknowledges that timely submission of a formal written notice of change or delay and Change Order Request, whether or not the circumstances of the change may be known to Sites Authority or available to Sites Authority through other means, is not a mere formality but is of crucial importance to the ability of Sites Authority to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information,</del></p>	Unfair shifting of risk.
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	<p>statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.</p> <p><del>b. CMAR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE OR DELAY, CHANGE ORDER REQUEST, NOTICE DISPUTING A UNILATERAL CHANGE ORDER, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CMAR OF THE RIGHT TO AN RGMP ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.</del></p>	
45	<p>GC 11.2.D.4.c  <u>T&amp;M Summary Sheet.</u> CMAR shall submit a T&amp;M summary sheet, which shall include total actual costs, within seven (7) Days following completion of additional Work on a time-and-material basis. CMAR's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. <del>CMAR's failure to submit the T&amp;M summary sheet within seven (7) Days of completion of the additional Work will result in CMAR's waiver for any reimbursement of any costs associated with the additional Work.</del></p>	Unnecessarily harsh provision.
46	<p>GC 11.4.F  F. <u>Sites Authority's Response.</u> Upon receipt of a Claim pursuant to this Article, Sites Authority shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide CMAR a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within <del>60</del><u>30</u> Days after Sites Authority issues its written statement.</p> <p>1. If Sites Authority needs approval from the</p>	Payment period is unduly long.

	<p>Sites Authority Board to provide CMAR a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Sites Authority Board does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, Sites Authority shall have up to three (3) Days following the next duly publicly noticed meeting of the Sites Authority Board after the 45-Day period, or extension, expires to provide CMAR a written statement identifying the disputed portion and the undisputed portion.</p>	
47	<p>GC 11.4.H.1  Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, Sites Authority shall provide CMAR a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within <del>60</del> 30 Days after Sites Authority issues its written statement. Any disputed portion of the Claim, as identified by CMAR in writing, shall be submitted to nonbinding mediation, with Sites Authority and CMAR sharing the associated costs equally. Sites Authority and CMAR shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.</p>	<p>Payment period is unduly long.</p>
48	<p>GC 13</p>	<p>CMAR needs suspension and termination rights.</p>
49	<p>GC 13.2.A  Sites Authority may, for any reason through a written notice to CMAR, order CMAR to suspend performance of the Preconstruction Services. Prior to any resumption of Preconstruction Services at Sites Authority's direction, CMAR shall notify Sites Authority of any additional costs CMAR believes it is entitled to within 30 Days of its receipt of the request to resume suspended Preconstruction Services, <del>or such claim shall conclusively be deemed to have been waived.</del> Sites Authority shall not be liable for any additional costs, damages or anticipated profits incurred by CMAR or its Subcontractors and the Phase 1 Pricing shall not be increased during the period of suspension, except the actual costs incurred</p>	<p>CMAR should be paid the overhead and profit on the increased costs resulting from a Sites Authority suspension. Waiver provision is too harsh.</p>

	<p>by CMAR, <del>excluding</del> <u>including</u> overhead and profit, for reasonable and unavoidable costs of suspending the Preconstruction Services. If CMAR establishes that the suspension of the Preconstruction Services had a material and adverse effect on CMAR's costs for the performance of the Preconstruction Services, CMAR shall be entitled to cost relief, as appropriate and determined by Sites Authority acting reasonably and subject to CMAR's duty to mitigate damages.</p>	
50	<p>GC 13.3.C  Sites Authority shall not be liable for any additional costs, damages or anticipated profits incurred by CMAR or its Subcontractors and the RGMP shall not be increased during the period of suspension, except the actual costs incurred by CMAR, <del>excluding</del> <u>including</u> overhead and profit, for (a) the purpose of safeguarding the Project and material and equipment in transit or at the Site during the period of suspension, (b) CMAR's or its Subcontractor's rented equipment which must maintained at the Site and to the extent costs cannot be mitigated by CMAR, <del>(c) other impacts resulting from the suspension:</del> or <del>(ed)</del> other reasonable and unavoidable costs of shutting down the Project, or reassembling personnel and equipment resulting directly from such suspension. CMAR shall be granted an extension of the Contract Time equal to the number of days performance of Construction Services are suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from CMAR's non-compliance with the requirements of the Contract.</p>	<p>CMAR should be paid the overhead and profit on the increased costs resulting from a Sites Authority suspension as well as for the other impacts of such suspension.</p>
51	<p>GC 13.5.C  In case of such termination for Sites Authority's convenience, CMAR shall be entitled to receive payment for Construction Services actually completed by CMAR in conformity with the Contract prior to CMAR's receipt of Sites Authority's notice of termination and costs incurred by reason of such termination <u>plus overhead and profit</u>. Any documentation substantiating costs incurred by CMAR solely as a result of Sites Authority's exercise of its right to terminate the Contract pursuant to this clause, which costs CMAR is authorized under the Contract documents to incur, shall: (1) be submitted to and received by Sites Authority no later than 30 Days after the effective date of the notice of termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by Sites Authority's Termination of Construction Services for Convenience." <del>If Sites Authority rejects any costs,</del></p>	<p>CMAR should be paid the overhead and profit on the increased costs resulting from a Sites Authority termination for convenience. Waiver provision is too harsh.</p>

	<del>CMAR shall be deemed to waive the rejected costs unless CMAR files a claim within thirty (30) Days of the rejection pursuant to the dispute resolution procedures in these General Conditions.</del>	
52	GC 14.4.D Final payment of the five percent (5%) retention shall be made no later than 60 Days after the date of Substantial Completion, provided that a release of liens and claims has been received from CMAR pursuant to Civil Code section 8136. In the event of a dispute between Sites Authority and CMAR, <u>where Sites Authority is the claimant</u> , Sites Authority may withhold from the final payment an amount not to exceed 150% of the <u>amount Sites Authority claims it is due-disputed amount</u> .	Clarification of when withholding is appropriate.
53	GC 15.17.B <del>ADA. CMAR shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. CMAR shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.</del>	CMAR is not the designer of record and will build to the design provided by Sites Authority.
54	GC 15.17.D <u>Other Laws.</u> All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by Sites Authority, <u>at <del>now</del>with an appropriate</u> increase in the RGMP <del>or</del> <u>and</u> extension of Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.	This is an unfair shifting of risk. CMAR should be entitled to monetary and schedule relief if Sites Authority failed to insert any mandatory law.
55	SC 4.3 A. CMAR’s aggregate liability to Sites Authority with respect to damages arising out of the performance or unexcused non-performance of any Work performed on the Project shall not exceed [INSERT AMOUNT] of the Reservoir Package GMP for the entire Project. This limitation on liability shall not affect the CMAR’s obligation to provide insurance pursuant to the Contract Documents. This limitation of liability excludes: <del>1. Defense and indemnification obligations required of the CMAR;</del> 2. Costs, liabilities, damages, or obligations arising from the gross negligence, reckless	The carveouts were too broad.

	<p>conduct, willful acts or omissions, intentional misconduct, fraud, illegal, or unlawful acts, willful injury to person or property, or violation of Applicable Law, whether based on contract, tort (including negligence), strict liability, or any other legal theory, by the CMAR or any of its employees, consultants, Subcontractors, or Suppliers, or anyone working directly or indirectly for whom such parties may be liable;</p> <p>3. Fines, penalties, and other charges assessed by applicable governmental authorities, which are attributable to CMAR;</p> <p><del>4. Claims covered by insurance required of the CMAR by the Contract Documents to the extent there are insurance proceeds available;</del></p> <p><del>5. Liquidated damages;</del></p> <p>6. <del>CMAR's liability for damages expressly provided for in the Contract Documents, including without limitation</del> statutory damages imposed by the Sites Authority or damages imposed by third parties with jurisdiction over the Project; and</p> <p><del>7. CMAR's warranties and guarantees under the Contract Documents, including, but not limited to, latent construction defects.</del></p>	
56	<p>SC 4.4.C Waiver of Consequential Damages</p> <p>B. CMAR shall have no liability to Sites Authority for any type of special, consequential or incidental damages arising out of or connected with CMAR's performance of the Work <del>in excess of [INSERT AMOUNT]</del>. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the Work under this Contract, and negligence or strict liability of CMAR.</p> <p>C. This limit of liability shall not, however, apply to, limit or preclude recovery of all damages, regardless of the nature of those damages, related to:</p> <ol style="list-style-type: none"> <li>1. CMAR's obligation to pay liquidated damages as set forth in the Contract Documents.</li> <li><del>2. Damages caused by CMAR's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts.</del></li> <li><del>3. CMAR's obligations to indemnify and defend the Sites Authority and other indemnified</del></li> </ol>	<p>There should be no liability for consequential damages. The exclusions are inappropriate for a waiver of consequential damages provision and the scope of which renders the provision meaningless.</p>

	<p><del>parties as set forth in the General Conditions.</del></p> <p><del>4. CMAR’s liability for any type of damage to the extent such damage is covered and paid by insurance required to be provided by or for CMAR as specified in the Contract Documents.</del></p> <p><del>5. Personal injury or death occurring during performance of the Work.</del></p> <p><del>6. Punitive or treble damages.</del></p> <p><del>7. CMAR’s liability for damages expressly provided for in the Contract Documents, including without limitation statutory damages imposed by the Sites Authority or damages imposed by third parties with jurisdiction over the Project.</del></p> <p><del>8. CMAR’s warranties and guarantees under the Contract Documents, including, but not limited to, latent construction defects, along with any resulting damage.</del></p>	
57	<p>Attachment 7—Performance Bond form</p> <p>Whenever CMAR shall be, and is declared by Sites Authority to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at <del>Sites Authority’s</del><u>Surety’s</u> option:</p> <ol style="list-style-type: none"> <li>1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or</li> <li>2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such Bidder, the Surety and Sites Authority, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Reservoir Package GMP, including other costs and damages for which Surety may be liable. The term “balance of the Reservoir Package GMP” as used in this paragraph shall mean the total amount payable to CMAR by Sites Authority under the Contract and any modification thereto, less any amount previously paid by Sites Authority to CMAR and any other set offs pursuant to the Contract Documents.</li> </ol>	<p>The modifications are only two concerns with the bond forms. CMAR should have the ability to negotiate the terms and conditions of the final bond forms.</p>

<p>3. Permit Sites Authority to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Reservoir Package GMP, including other costs and damages for which Surety may be liable. The term “balance of the RGMP” as used in this paragraph shall mean the total amount payable to CMAR by Sites Authority under the Contract and any modification thereto, less any amount previously paid by Sites Authority to CMAR and any other set offs pursuant to the Contract Documents. <a href="#">Sites Authority has a duty to mitigate the costs during the completion of the Project.</a></p>	
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1. Proposer may add as many rows to this form as necessary to describe proposed comments and changes.
2. Proposer shall include the completed Form I in Appendix H of in its Proposal (if submitting).

# Attachment E

**Form I**  
**Suggested Material Comments to the Draft CMAR Contract**

	Describe the proposed Draft CMAR Contract modification, citing the section or subsection.	Describe the rationale for the proposed change:
<b>1</b>	<p><b>General Conditions, Article 3.1A Indemnification (page 95 of 318).</b></p> <p>Update the indemnification provision so that CMAR’s obligation to defend and indemnify is limited to third party claims against Sites Authority for bodily injury or tangible property damage caused by CMAR’s negligence in performance of the Preconstruction or Construction Services.</p>	<p>As currently written, the indemnification provision contains broad-form indemnification for a wide range of losses, costs and expenses that are in any way connected to the Services. There is no requirement for causation and no requirement for CMAR to be at fault. CMAR could be performing exactly as the contract requires, and the indemnity would still be triggered. This indemnification profile, taken with the carveouts from the limitation on liability and the waiver of consequential damages imposes on CMAR unlimited exposure for Site Authority’s costs, expenses and liabilities, regardless of fault or causation.</p>
<b>2</b>	<p><b>Special Conditions, Article 4.3A Limitations on Liability (page 205 of 318)</b></p> <p>Update the limitation on liability by:</p> <ul style="list-style-type: none"> <li>(i) deleting sub-para 1 (defense and indemnification obligations required of CMAR);</li> <li>(ii) amending sub-para 2 by deleting all the words from “or violation of Applicable Law” onwards;</li> <li>(iii) update sub-para 4 by adding at the end the words “up to the level of coverage required to be maintained under the Contract Documents”;</li> <li>(iv) deleting sub-para 5 (Liquidated Damages)</li> <li>(v) deleting sub-para 6 (liability for damages expressly provided for)</li> <li>(vi) deleting sub-para 7 (CMAR’s warranties and guarantees)</li> </ul>	<p>Re item (i), based on the broad form indemnification contained in GC Article 3.1A, carving out indemnification obligations would make the liability cap essentially meaningless. It wouldn’t cover anything.</p> <p>Re item (ii), violation of law (insofar as it relates to contractual performance) is a matter to be included within the contractual liability cap. Otherwise the cap would have no meaning. Fines and penalties levied on Sites Authority resulting from breach of law are already carved out under sub-para 3.</p> <p>Re item (iii), claims covered by insurance proceeds may fall outside the liability cap, provided that is limited to the level of coverage required to be maintained under the Contract. Sites Authority is not buying access to any corporate coverage CMAR maintains in excess of the contractual requirements.</p> <p>Re (iv) Liquidated Damages are intended to address delay risk specifically. If the Contract instead opted for unliquidated, actual damages for delay then such amounts would fall under the liability cap.</p>

2	<p><b>Special Conditions, Article 4.3A Limitations on Liability (page 205 of 318) Cont...</b></p>	<p>Delay LDs compensate for the same loss and should be given the same treatment.</p> <p>Re (v) Damages expressly provided for under the Contract are exactly the damages that would be subject to the limitation of liability.</p> <p>Re (vi) warranties and guarantees are contractual promises made by CMAR required Work quality. The cost of performing such actions would not be covered by the limitation on liability, but the liability arising from a breach of such warranties/guarantees should be subject to the contractual liability cap.</p>
3	<p><b>Special Conditions, Article 4.4 Waiver of Consequential Damages (page 206 of 318).</b></p> <p>Make the waiver of consequential damages in Article 4.4A apply with mutual effect for both CMAR and Sites Authority. In conjunction, delete the limitation on CMAR's liability in Article 4.4B and the carveouts from that limit in Article 4.4C.</p>	<p>A waiver of consequential damages provides protection and clarity for both owner and contractor regarding potential damages exposure. It is fair and equitable that both parties are able to rely upon a mutual waiver of such damages.</p>
4	<p><b>General Conditions Articles 3.2A.4 Preconstruction Services Insurance, General Requirements (page 96 of 318).</b></p> <p>Delete Article 3.2A.4.</p>	<p>As written, states if CMAR maintains higher limits than the minimum insurance limits shown, Sites Authority is entitled to coverage for the higher limits. If CMAR's corporate program provides additional coverage in excess of the required insurance, CMAR should not be penalized on losses that exceed the required insurance types or amounts. Further, please consider that CMAR's corporate excess liability policies are not intended to insure singular projects, but to provide sufficient coverage for all CMAR's operations across North America. Please consider striking this paragraph in its entirety.</p>
5	<p><b>General Conditions Article 3.2B Preconstruction Services Insurance, Additional Insureds (page 97 of 318)</b></p> <p>Delete the following sentence from 3.2B "Notwithstanding the minimum limits set forth in the Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds hereunder".</p>	<p>As written, states that all available insurance proceeds in excess of the specified minimum limits shall be available to the required additional insured parties. It is not equitable to request CMAR to accept this unlimited risk. Mutually agreeable, higher limits of insurance than currently drafted can be provided instead.</p>

6	<p><b>General Conditions Article 13.4.B (page 186 of 318)</b></p> <p><i><del>“B. After expiration of the ten (10) Day period, Sites Authority may terminate the Contract by providing a notice of termination to CMAR. Sites Authority may take over and complete the Work by any method it may deem appropriate, including enforcement of <b>enforce</b> the Performance Bond. If Sites Authority takes over the Work, Sites Authority may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to CMAR as may be on the Site.”</del></i></p>	<p>As currently written, the article allows Sites Authority to control surety completion options. This language is a material variation from standard bond forms, and sureties find this language to be quite onerous. It severely limits the surety’s ability to mitigate loss costs and forces sureties to abide by the owner’s remedy election.</p>
7	<p><b>General Conditions Article 13.4.C (page 186 of 318)</b></p> <p><i><del>“C. CMAR shall not be entitled to receive any further payment hereunder as a result of such termination. <b>Subject to the penal sum of the Performance Bond</b> CMAR and its surety shall be liable to Sites Authority for any excess costs or other damages incurred by Sites Authority to complete the Work, including professional services and expenses, reasonable overhead, profit, and attorneys’ fees. This payment obligation shall survive completion of the Project and termination or expiration of this Contract.”</del></i></p>	<p>As currently written, the article fails to limit recovery under the bonds to the bond’s penal sum and the costs allowed in the CMAR contract as per market standard.</p>
8	<p><b>The Performance Bond Form, Attachment 7, page A7-3 (page 218 of 318)</b></p> <p><i><del>“Surety expressly agrees that Sites Authority may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by CMAR.</del></i></p> <p><i><del>Surety shall not utilize CMAR in completing the Project nor shall Surety accept a Bid from CMAR for completion of the Project if Sites Authority, when declaring CMAR in default, notifies Surety of Sites Authority’s objection to CMAR’s further participation in the completion of the Project.”</del></i></p>	<p>As currently written, the article allows Sites Authority to reject any contractor or subcontractor, including the CMAR from further participation in the event of a default. Sureties also find this language to be outside of industry standard practices and burdensome. Removal of this language allows sureties to utilize their best practices to mitigate costs and complete the project without unnecessary, additional delays.</p>

<p>9</p>	<p><b>General Conditions Article 3.2.I.7 Form and Proof of Carriage of Insurance (page 100 of 318)</b></p> <p>Delete the following sentence from 3.2.I.7:  <i>“Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage.”</i></p>	<p>All insurance policies contain standard express exclusions which void all coverage, defense and indemnity included, for all classes of insureds because the insurance market cannot afford to defend and indemnify any and all claims. Insurers are unlikely to agree to provide an on-going duty to defend or indemnity claims for which there is no insurance coverage.</p>
<p>10</p>	<p><b>General Conditions Article 3.2.I.1 Form and Proof of Carriage Insurance (page 99 of 318)</b></p> <p><i>“1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by Sites Authority’s Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by CMAR. At the election of Sites Authority, CMAR shall procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, CMAR shall provide an endorsement satisfactory to Sites Authority indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.”</i></p>	<p>As currently written, requires insurance deductibles to be declared and approved by Sites Authority. This is reasonable in the case of SIRs where the insurer has no responsibility to pay claims within the SIR amount. However, deductibles are the sole responsibility of the first named insured on the policy because the insurer is responsible to pay all third-party claims from dollar one. The deductible does not become the responsibility of an owner or any other additional insureds on the policy. The financial risk of deductible recovery is solely between the insurer and CMAR for which collateral arrangements have already been made. Because there is no financial exposure to Sites Authority CMAR’s deductibles should be at the sole discretion of the CMAR.</p>
<p>11</p>	<p><b>General Conditions Article 4.4 Composition of Reservoir Guaranteed Maximum Price, Home Office Overhead (page 104 of 318)</b></p> <p>Amend Article 4.4.A.4:  <i>“Home office overhead percentage applied to Direct Cost, <b>Indirect Cost</b>, and Subcontractor Construction Cost”</i></p> <p>Amend the first sentence of Article 4.4.E:  <i>“Home Office Overhead. Unless otherwise agreed to by the Parties, CMAR’s charge for home office overhead shall be a percentage, agreed to by the Parties in CMAR’s Cost Proposal Form, applied to the Cost of Work except for Indirect Cost.”</i></p>	<p>The RFQ draft stated that CMAR fee – which included compensation for home office overhead - would be charged on Direct Cost, Indirect Cost and Subcontractor Construction Cost as the Cost of Work Components.</p> <p>The RFP draft has retired the use of fee and replaced it with independent mechanisms for compensation of profit and then for home office overhead. Indirect Cost has now been removed from the items to which home office overhead is to be applied.</p> <p>Our audited rate for general and administration includes application to Indirect Costs.</p>

<p>12</p>	<p><b>General Conditions Article 4.4.G Composition of Reservoir Guaranteed Maximum Price, Subcontractor Construction Cost (page 110 of 318)</b></p> <p><i>Amend Article 4.4.B.3.a: “Payments made by CMAR to Key Subcontractors performing Construction Services. Key Subcontractors are paid based on their actual and verifiable Direct Cost and Indirect Cost plus a Key Subcontractor <del>Fee</del><del>Profit</del>. The Key Subcontractor <del>Fee</del><del>Profit</del> shall compensate Key Subcontractors for their <b>home office overhead</b>, profit, and other costs and expenses not specifically included in their Direct Cost and Indirect Cost. Unless otherwise agreed to by the Parties, the Key Subcontractor Profit shall be established in each Reservoir Work Package based on [INSERT AGREED TO PARAMETERS BASED ON CMAR’S PROPOSAL]. The Key Subcontractor <del>Fee</del><del>Profit</del> shall be a percentage and shall only be applied to a Key Subcontractor’s Direct Cost and Indirect Cost. At Sites Authority’s discretion, Key Subcontractor pricing for an RGMP may be converted to a lump sum price with a negotiated discount.”</i></p>	<p>The RFQ draft stated that CMAR’s subcontractor fee would compensate CMAR’s subcontractor for its home office and profit.</p> <p>The RFP draft has replaced the term “fee” with “profit” and struck the ability of CMAR’s subcontractor to secure compensation for its home office overhead.</p>
<p>13</p>	<p><b>General Conditions Articles 4.5.B.4 &amp; 4.5.B.5 Competitive Procedures for Self-Performed Construction Services (page 113 of 318)</b></p> <p><i>Amend following sentence in Article 4.5.B.4: “Unless otherwise agreed to by the Parties, if CMAR’s pricing is within <b>(TBD)</b>3% percent of Sites Authority’s independent cost estimate, CMAR will be allowed to perform the Self-Performed Construction Services.”</i></p> <p><i>Amend following sentence in Article 4.5.B.5: “Unless otherwise agreed to by the Parties, if CMAR’s pricing for Self-Performed Construction Services is more than <b>(TBD)</b>3% percent higher than Sites Authority’s independent cost estimate, the Parties shall meet and confer to compare pricing and attempt to reconcile any differences.”</i></p>	<p>A 3% differential is a notably narrow differential – recommend leaving this open to either Authority’s discretion or to be aligned upon RGMP packaging definition.</p>

1. Proposer may add as many rows to this form as necessary to describe proposed comments and changes.
2. Proposer shall include the completed Form I in Appendix H of in its Proposal (if submitting).