

## OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement is made by and between the Carson City School District of 1402 W. King Street, Carson City, NV, 89703, hereinafter referred to as "Owner," and the Construction Manager at Risk named below, hereinafter referred to as "CMAR," is made and entered into as follows:

**Execution Date:** \_\_\_\_\_

### **Project Identification**

CCSD Project No.:	<b>51.23.04</b>
Project Name:	<b>Remodel Bathrooms at Carson High School</b>
Project Address, City, State:	1111 North Saliman Road, Carson City, NV 89701
Labor Commission PWP No.:	CC-2024-100

### **Owner**

Carson City School District  
1402 W. King Street  
Carson City, Nevada 89703  
(775) 283-2000

Director of Operations:

Steven West

Contact Number:

(775) 283-2181 (office)

Fax:

(775) 283-2191

Email:

[swest@carson.k12.nv.us](mailto:swest@carson.k12.nv.us)

### **CMAR and Project Contact:**

Firm Name

Contact Name, Title

Address

City, State, Zip Code

(775) Phone Number (Office)

(775) Phone Number (Cell)

(775) Fax Number (Fax)

Email Address

### **Architect:**

Van Woert Bigotti Architects  
1400 South Virginia Street, Suite C  
Reno, NV 89502  
(775) 328-1010  
Contact: K. Brad Van Woert, III, Architect  
[bvw@vwbarchitects.com](mailto:bvw@vwbarchitects.com)  
Angela S. Bigotti-Chavez, Architect  
[abc@vwbarchitects.com](mailto:abc@vwbarchitects.com)

**ARTICLE 1 - GUARANTEED MAXIMUM PRICE (GMP)**

For furnishing all labor, materials, equipment, tools, and services, and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum for the approved Guaranteed Maximum Price (GMP) for the entire Work on the referenced Project as follows:

Cost of the Base Work (excluding General Conditions)	\$
General Conditions	\$
CMAR Contingency Fee	\$
Insurances (includes Payment & Performance Bond)	\$
CMAR Fee - %	\$
Owner's Contingency	\$
<b>TOTAL Guaranteed Maximum Price (GMP)</b>	<b>\$</b>

This Guaranteed Maximum Price ("GMP") is for the performance of the Work in accordance with the Contract Documents (as defined in Article 2 hereof).

CMAR's GMP for the entire Work on the Project may be subject to the following cost savings sharing agreement:

SAVINGS SPLIT

Savings Split	Owner	CMAR
Percentage Split of CMAR's Contingency Savings	90%	10%
Percentage Split of Owner's Contingency	100%	0%

**ARTICLE 1A - ALLOWANCES**

*{CMAR's Optional method to cover items not fully designed or Value Engineered at time of execution of this Agreement.}*

The CMAR has included in the GMP for the Cost of the Work "Allowances" for items for which final costs have not yet been determined. Whenever during the course of the construction, costs are more or less than the allowances, the Owner may at its option allocate the savings to the Owner's Contingency, reallocate the funds to another item, or take an additive or deductive change order. The CMAR shall not be entitled to the savings split for cost savings on Allowance items. In no event shall there be an increase in the GMP or a material change in the Scope of the Work without the Owner's prior written consent.

**ARTICLE 2 - INCORPORATED DOCUMENTS**

The Owner and the CMAR mutually agree that the following documents are incorporated into and made a part of this Agreement (Contract Documents) by reference:

1. Exhibit A: Drawings and Specifications, including Addenda, if any
2. Exhibit B: Assumptions, Clarifications and Exclusions on which the GMP is based

3. Exhibit C: GMP
4. Exhibit D: Schedule of Work
5. Exhibit E: Listing of Subcontractors Exceeding 5%
6. Exhibit F: Listing of Subcontractors Exceeding 1%
7. Exhibit G: General Conditions of the Contract
8. CMAR Interview Submittal
9. CMAR Fee Proposal
10. CMAR Request for Proposal Document (*including all Exhibits*)
11. Addenda
12. Prevailing Wage Rates for Northern Nevada Rural Counties, *Effective October 1, 2023*
13. Performance and Payment Bonds
14. Labor and Materials Bonds (*if applicable*)
15. Certificate of Insurance Liability
16. Change Orders (*if applicable*)
17. CCSD, Communications Systems Construction Standards Revision, Dated: 02/16/2023
18. CCSD Contractor Policy and Procedures, Dated: 11/07/2022
19. Wise Consulting,
  - a. *Asbestos Renovation Survey*, Dated: November 02, 2023
  - b. *Lead Renovation Survey*, Dated: November 10, 2023
  - c. *Lead Renovation Survey*, Dated: November 03, 2023
20. Carson City School District Standard Specifications to be used
21. Other Documents (list):

In the event of any conflict between or among any of the Contract Documents, the terms of this Agreement shall control over the attached Exhibits, and the attached Exhibits shall control over the items not attached.

#### **ARTICLE 3 - AGREEMENT MODIFICATIONS**

This Agreement, including the Contract Documents, constitutes the entire agreement between the parties and may be modified only by a written Amendment executed by both parties. The Contract Documents form the Agreement between the Owner and the CMAR. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all.

CMAR firm shall not substitute a different employee for an employee whose resume was submitted during the proposal phase of the Request for Proposal solicitation unless the employee whose resume was submitted is no longer employed by the CMAR or is unavailable for medical reasons; or if the Owner entered into a contract with the CMAR for pre-construction services pursuant to NRS 338.1693 more than ninety (90) days after the date on which the final ranking of application made pursuant to NRS 338.1696(7).

#### **ARTICLE 4- CMAR CONSTRUCTION SERVICES/WORK**

The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

The CMAR agrees to provide all labor materials, equipment, tools, and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project. Time shall be of the essence of this Agreement and the CMAR agrees to satisfactorily complete all services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed adequate cause for termination of this Agreement.

**ARTICLE 5 – STATUTORY REQUIREMENTS & GOVERNING LAW**

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) as it applies to this Agreement and to the Work performed under this Agreement and agrees to comply with all such applicable portions of NRS. This Agreement shall be construed and interpreted according to the laws of the State of Nevada.

**ARTICLE 6 – EXAMINATION OF DOCUMENTS**

Execution of this Agreement by each party shall constitute a representation by each party that has fully examined the contents of this Agreement and all of the Contract Documents, including the Owner’s General Conditions of the Contract, and that both parties have read and understand the same, and specifically agree to be bound thereby.

**ARTICLE 7 – DISPUTE RESOLUTION**

Dispute Resolution provisions are as set forth in Section 3.9 of the General Conditions of the Contract for CMAR.

**ARTICLE 8 – INDEMNIFICATION**

Indemnification provisions are set forth in Section 3.15 of the General Conditions of the Contract.

**ARTICLE 9– ASSIGNMENT RIGHTS**

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

**ARTICLE 10 – OWNERSHIP AND USE OF DOCUMENTS**

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of its obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR’s obligations under this Agreement without the prior written consent of the Owner.

**ARTICLE 11 – INDEPENDENT CONTRACTOR**

The parties agree that the CMAR is an independent contractor and that this Agreement is entered into in accordance with Nevada law; that the CMAR is not an agent or employee of Owner, and that the CMAR will not be entitled to any insurance or other benefits provided by Owner for its employees, and that there shall be no:

1. Withholding of income taxes by the Owner,
2. Industrial insurance coverage provided by the Owner,
3. Participation in group insurance plans which may be available to employees of the Owner,
4. Participation or contribution by either the independent contractor or the Owner,
5. Accumulation of vacation leave or sick leave; or

6. Unemployment compensation coverage provided by the Owner if the requirements of NRS Section 612.085 for independent contractors are met.

CMAR represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such work. CMAR shall act as an independent contractor and not as the agent of Owner in performing the Contract and is responsible for maintaining complete control over its employees and all of its suppliers and Subcontractors. Nothing contained in this Contract or any Subcontract awarded by CMAR shall create any contractual relationship between any such supplier or Subcontractor and Owner. However, each subcontract and supplier agreement entered into by CMAR, relative to the Contract, shall bind such Subcontractor or supplier to the same terms and conditions as appear in the Contract. CMAR shall perform all work in accordance with its own methods subject to strict compliance with the Contract.

#### **ARTICLE 12 - FAIR EMPLOYMENT PRACTICES**

As outlined in NRS 613.330, in connection with the performance of Work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The CMAR further agrees to insert provisions outlined in NRS 613.330 in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

#### **ARTICLE 13 - INSURANCE PROVISIONS**

A Certificate of Liability Insurance evidencing the required coverage, as stipulated in Section 8 of the General Conditions of the Contract for CMAR shall be provided to and approved by the Owner prior to the CMAR mobilizing onto the Project site and prior to commencement of any Work on the Project.

#### **ARTICLE 14 - PAYMENT**

The CMAR shall submit a Progress Payment Application not more than once each month in the form required by the Owner. Each Progress Payment Application shall be accompanied by a current Project Schedule, updated to reflect all Change Orders and/or changes in the Work.

Each Progress Payment Application shall correctly set forth the value of all Work satisfactorily performed to date, less 5% of that amount as a retained percentage. The Owner may also pay the invoiced value, less retention, of materials properly stored on site or in approved, bonded, and insured facilities. Once the satisfactorily completed Work is more than 50% complete, the Owner may discontinue withholding any additional retention beyond the 5% already withheld on the initial 50% of the completed Project.

#### **ARTICLE 15 - FINAL PAYMENT**

When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, and a Certificate of Occupancy has been issued by the local governmental authority, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the GMP due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the Owner and the property relating or pertaining to the Work.

Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for warranties and insurance shall continue to apply.

**ARTICLE 16 - TERMINATION**

Termination provisions for both the Owner and CMAR are as set forth in Sections 3.10 and 3.11 of the General Conditions of the Contract for CMAR.

**ARTICLE 17 - INFORMATION ACCESS**

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Agreement shall be subject to inspection, examination and audit by the Owner, its agents and representatives, and the State of Nevada during the course of construction of this Project and for 3 years after its completion.

**ARTICLE 18 - CONTRACT TIME & LIQUIDATED DAMAGES**

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. All work shall be substantially completed, as evidenced by a Certificate of Occupancy, Temporary Certificate of Occupancy, Notice of Substantial Completion, or a Certificate of Substantial Completion, executed by Owner's Architect or design consultant, within the number of calendar days stipulated below, after which time, the liquidated damages provisions shall apply.

**SCHEDULE:** Remodel of the eight (8) bathrooms at Carson High School shall begin on June 3, 2024 with the issuance of the Notice to Proceed. The four (4) south bathrooms are to be completed on or before August 12, 2024 when the start of school begins. The construction end date for the bathroom remodel for the north bathrooms will be targeted for October 14, 2024. This will be an active campus after school starts on August 12, 2024 until the completion date targeted for October 14, 2024.

The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the work in accordance with the Contract Documents within the specified Contract Time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty, but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement. Liquidated damages shall cease to be assessed on the date of Substantial Completion provided the CMAR completes all punch-list Work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion.

**Liquidated Damages:**        \$   1,000   per  calendar day 

***SIGNATURE PAGE FOLLOWS***

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

**Carson City School District**

By: \_\_\_\_\_  
Andrew Feuling, Superintendent

Date: \_\_\_\_\_

**Construction Manager at Risk:**

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

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Distribution

Original - CCSD

- cc: CCSD Project Manager
- Contractor
- Van Woert Bigotti Architects

DRAFT