

Construction Manager At Risk Agreement

Campbell County Hospital District (Owner) and _____ (CMAR) agree as follows:

1. **The Project.** The project consists of the construction of the Pioneer Manor skilled nursing and rehabilitation center in Gillette, Wyoming as described in the documents attached as Exhibit E.

Owner employs CMAR to perform the professional services in connection with the Project. CMAR shall perform the construction phase services outlined in this agreement. All services performed by the CMAR shall be done in a diligent, professional, competent, expeditious, timely, and good and workmanlike manner.

2. **Independent Contractor.** CMAR is an independent contractor and is not an employee or agent of Owner.

3. **Guaranteed Maximum Price.** The CMAR will construct the project in a good and workmanlike manner and provide all work to construct and complete the project in strict accordance with the contract documents for an amount not to exceed \$_____ (guaranteed maximum price). Anything herein to the contrary notwithstanding, the cost of work as defined in paragraph 5.1.2 plus the CMAR construction phase fee as defined in paragraph 5.1.4 plus the CMAR contingency as actually expended as defined in paragraph 5.1.5 shall not exceed the guaranteed maximum price.

4. **Construction Phase.** The following provisions shall apply to the construction of the project:

4.1. **Contract time.** The construction phase shall commence on the date of this agreement. CMAR shall achieve substantial completion of the construction of the project by_____ and final completion of the project within 20 days thereafter.

4.2. **Compliance with Contract.** CMAR shall construct the project in strict accordance with the contract documents and within the contract time. CMAR will supervise and direct the work on the project and be solely responsible for the construction means, methods, techniques, sequences, and procedures for the work. CMAR will provide and pay for all labor, materials, equipment, supervision, services, tools, water, heat, cooling, storage, fuel, utilities, transportation, permits, bonds, insurance, and other facilities and services necessary for the proper construction and completion of the project in strict accordance with the contract documents. CMAR will use all reasonable efforts to maximize cost savings in the construction of the project.

4.3. **Permits.** CMAR shall obtain at its expense all permits, licenses and

authorizations from governmental agencies required for construction and completion of the project and give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules and regulations.

4.4. **Bids.** CMAR shall award and enter into, as general contractor, all subcontracts necessary and appropriate to provide all labor, materials and equipment for construction of the project. CMAR shall obtain bids for all portions of the work, including the portions of the work that the CMAR desires to perform with the CMAR's own personnel. The bid packages shall state that all bids are to be addressed to the CMAR and not to Owner but that the bids are to be delivered to the Owner. The CMAR shall publicly advertise a call for bids in the manner prescribed by law and by Owner, and the bids will be opened in public following reasonable public notice.

CMAR may seek to perform portions of the work itself if CMAR submits its sealed bid for those portions of the work in the same manner as all other bidders and Owner determines that CMAR's bid proposal provides the best value for Owner. Owner's determination in such matters is final. If CMAR intends to submit a proposal for such work, it shall notify Owner in writing of its intent to submit a bid proposal before submitting the bid.

All bids, shall be submitted and opened at the same time in the presence of the Owner, Owner's Consultant, and CMAR. CMAR shall prepare and provide to Owner and Owner's Consultant a written bid analysis showing the amount of each bid and the name of each bidding party. CMAR shall notify Owner and Owner's Consultant in writing of the bids which CMAR proposes to accept. CMAR shall not accept a bid other than the low bid until delivering written justification for such action to Owner and receiving written approval by Owner with no increase in the guaranteed maximum price.

After CMAR has had an opportunity to analyze all such bids and provide comments to the Owner, the Owner shall then determine with the advice of the CMAR which bids will be accepted. The Owner may designate specific persons or entities for whom the CMAR shall obtain bids; however, the Owner may not prohibit the CMAR from obtaining bids from other qualified bidders. The CMAR shall not be required by owner to contract with anyone to whom the CMAR has reasonable objection.

If a specific bidder among those whose bids are delivered by the CMAR to the Owner (1) is recommended to the Owner by the CMAR, (2) is qualified to perform that portion of the work, and (3) has submitted a bid which conforms to the requirement of the contract documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the CMAR may require that a change order be issued, if necessary, to adjust the contract time and the guaranteed maximum price by the difference between the bid of the person or entity recommended to the Owner by the CMAR and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

No subcontracts or agreements with suppliers of material or equipment shall be awarded on the basis of a cost plus fee without Owner's prior written consent.

4.5. **Staff.** CMAR shall maintain an adequate, competent, full time staff at the project site at all times while construction is taking place to coordinate and direct the work and the progress of subcontractors on the project. The staff will include a competent construction superintendent who has been approved by Owner and other staff as are necessary to supervise and direct the construction work using CMAR's best skill and attention. Attached as Exhibit D is a personnel chart identifying CMAR's project personnel, the title or job classification of each, the hourly or monthly rates for each and for categories of CMAR's personnel (which rates are inclusive of all wages, salaries, benefits, taxes and insurance). Before commencement of construction, CMAR shall submit to Owner for approval the names with resumes of the construction staff proposed by CMAR for the project. Exhibit D shall be revised to include the CMAR's construction personnel approved by Owner. Unless such personnel leave CMAR's employment, no appointment, substitution or reassignment of any of the personnel will be made by the CMAR without the prior written consent of Owner, which consent will not be unreasonably withheld.

4.6. **Progress Meetings and Reports.** CMAR shall schedule and conduct weekly progress meetings in which Owner, Owner's Consultant, CMAR and appropriate subcontractors can discuss the status of the work. CMAR shall also maintain a daily log of construction activities for each calendar day of the contract time using a form approved by Owner which will document all activities at the site including weather conditions, soil conditions, hours of operation by persons working at the site, the number of CMAR and other personnel present and working at the site by subcontract and trade, the equipment active or idle at the site, and a description of the construction work being performed. CMAR shall provide copies of the daily logs to Owner and Owner's Consultant on a weekly basis. The daily log will not satisfy any requirement in the contract documents of written notice or written claim to Owner or Owner's Consultant.

4.7. **Schedules.** CMAR shall perform project scheduling and, as construction progresses, update and deliver to Owner and Owner's Consultant detailed construction schedules, submittal schedules, inspection schedules and occupancy schedules and identify potential and actual variances between scheduled and probable completion dates of portions of the work.

4.8. **Supervision.** CMAR will supervise the activities of all subcontractors and evaluate subcontractors' personnel, equipment and performance with respect to each subcontractors' ability to meet the construction schedule and provide this information to Owner and Owner's Consultant at least weekly.

4.9. **Cost Accounting Records.** CMAR will maintain cost accounting records in

good form on expenditures and materials and identify and report to Owner and Owner's Consultant all variances between estimated costs and actual costs along with recommendations for action no more than two business days after acquiring such information.

4.10. **Debris.** CMAR shall keep the construction site free from debris, trash and construction wastes and upon substantial completion, remove all debris, materials, wastes, equipment, machinery and tools to permit Owner to occupy the project.

4.11. **Access.** CMAR will allow Owner and Owner's Consultant and their representatives access to the construction work at all reasonable times to inspect the quantity and quality of the work and to determine if the work is complying with the contract documents.

4.12. **Discipline.** CMAR shall maintain discipline and order among its employees and all persons performing work on the project. CMAR will not allow unfit or incompetent persons to perform work on the project.

4.13. **Safety.** CMAR shall be responsible for all safety precautions and programs in connection with the work.

4.14. **Errors.** CMAR will report immediately to Owner and Owner's Consultant any material error, inconsistency, conflict, ambiguity or omission which CMAR discovers in the contract documents.

4.15. **Submittals and Shop Drawings.** CMAR will review, approve and furnish promptly to Owner's Consultant all subcontractor submittals and shop drawings, product data, and product samples requested by Owner or required by the specifications. CMAR's approval and submittal of these items shall be a representation by the CMAR that the items are consistent with the contract documents.

4.16. **Document Availability.** CMAR shall maintain at the construction site for use by Owner and Owner's Consultant one copy of all drawings, plans, specifications, subcontracts, change orders, approved shop drawings and submittals, manufacturer's operating and maintenance instructions, warranties and guarantees. These documents shall be delivered to Owner upon substantial completion. Owner may inspect and copy these records and documents at any time. Before final completion, CMAR shall deliver to Owner as-built drawings showing all changes made in the project drawings and all buried or concealed installation of piping, conduit and utility services.

4.17. **Occupied Areas.** CMAR shall confine its construction activities to the construction site and approved staging areas.

4.18. **Temporary Job Site Facilities.** CMAR will provide all temporary job site

facilities necessary to enable the CMAR or its subcontractors to construct the project and to enable the CMAR to manage construction.

5. **Compensation.** Owner will compensate CMAR for its services and work as provided in this Section 5:

5.1 **Construction Phase.** Owner shall compensate the CMAR for the construction phase services as follows:

5.1.1. **Contract Sum.** Owner shall pay CMAR the contract sum. The ~~%contract sum+~~ shall equal the cost of work as defined in paragraph 5.1.3 plus the CMAR~~’~~ construction phase fee as defined in paragraph 5.1.4 plus the CMAR~~’~~ Contingency as actually expended as defined in paragraph 5.1.5.

5.1.2. **Guaranteed Maximum Price Limit.** Costs which would cause the guaranteed maximum price to be exceeded shall be paid by the CMAR without reimbursement by the Owner. Anything herein to the contrary notwithstanding, the contract sum and the amount which Owner is required to pay to the CMAR shall never exceed the guaranteed maximum price. The guaranteed maximum price may be increased only by a change order signed by Owner and the CMAR.

5.1.3. **Cost of Work Defined.** The term ~~%cost of work+~~ is defined in attached Exhibit A.

5.1.4. **Construction Phase Fee.** The CMAR~~’~~ construction phase fee shall equal _____% of the actual cost of work.

5.1.5. **Contingency.** The construction contingency (the ~~%Contingency+~~) is the amount reasonably and necessarily expended by the CMAR for the following to the extent not resulting from the CMAR~~’~~ negligence: (i) costs arising from extension of the contract time as to which no increase in the contract sum is allowed; (ii) costs arising from the default by a subcontractor, vendor or materialman which cannot be recovered from the subcontractor, vendor or materialman or its surety and as to which no increase in the contract sum is allowed; and (iii) costs arising from concealed physical conditions at the project site as to which no increase in the contract sum is allowed.

Before CMAR may use the Contingency for these types of costs, the CMAR must deliver a written memorandum to the Owner and Owner~~’~~ Consultant recommending a use of the Contingency, showing the amount of the Contingency to be used, describing the use of the funds, and providing detailed justification for use of the Contingency. Owner will have five days after receipt of the memorandum to approve or disapprove the proposed use of the Contingency. No expenditures from the Contingency shall be paid without prior notice to Owner and written approval of Owner, which approval will not be unreasonably withheld.

Without limiting the generality the foregoing, the Contingency is not available to cover costs incurred for and may not be used for (i) reworking defective work or replacing defective materials; (ii) resolving claims for nonpayment by subcontractors, suppliers, vendors or laborers; (iii) removing and discharging liens filed by any of such parties; (iv) re-executing non-conforming work or correcting defective work unless the responsible subcontractor is unbonded and uncollectible; (v) performing any warranty work unless the responsible subcontractor is unbonded and uncollectible; (vi) re-executing non-conforming work or correcting defective work or repairing damage or injury covered by insurance maintained, or required to be maintained, by the CMAR or any subcontractor; (vii) satisfying the CMAR's indemnity obligations; or (viii) legal costs and expenses, including attorney fees, associated with the project.

The initial amount of the Contingency is \$_____ which is based upon ___% of the initial estimate of the cost of work. The Contingency shall be reduced at the following times and in the following manner:

5.1.6. **Records.** CMAR shall keep full and detailed accounts and exercise such control as may be necessary for proper financial management under this contract. The accounting and control system shall be satisfactory to the Owner. The Owner and the Owner's representatives shall be afforded access to the CMAR's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this project, and the CMAR shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

6. **Payments.** CMAR will be paid for its work and services as follows:

6.1. **Construction Phase.** Payments to CMAR for construction phase services and work, not to exceed the guaranteed maximum price, shall be made as follows:

6.1.1 **Schedule of Values.** Before submitting an application for payment, CMAR shall provide to Owner and Owner's Consultant a schedule of values for the entire construction work allocated to various portions of the work using a system acceptable to Owner. The CMAR's construction phase fee shall be a separate line item on the schedule of values. Unless Owner objects to the schedule of values, this schedule will be used as the basis for progress payments to the CMAR. The schedule of values shall be prepared so that the guaranteed maximum price is not exceeded.

6.1.2. **Applications for Payment.** CMAR shall submit to Owner and Owner's Consultant monthly applications for payment. Each application shall be for one calendar month ending on the last day of the month. The application will be supported by such information as is reasonably requested by Owner or Owner's Consultant to verify the work done and the amount due. The application for payment shall include at a minimum a

statement showing the percentage of completion of each category of the construction work and an acceptable updated critical path management schedule for the work. Each application shall be for the cost of work paid by CMAR during the month plus a prorata share of the CMAR's construction phase fee which prorata share shall be based upon the amount of work completed. The application will include waivers of liens and claims for the CMAR and each of its subcontractors, suppliers, and materialmen on such forms as required by Owner to assure the effective waiver of any liens or claims relating to the work for which payment is made.

6.1.3. Owner's Consultant Review. Each application for payment shall be promptly reviewed by the Owner's Consultant who shall either issue a certificate of payment to Owner for such amount as is properly due or issue written notice for withholding such a certificate.

6.1.4. Payment. Except for final payment which shall be made as provided in paragraph 6.7, Owner shall make payment to the CMAR not later than the end of the month following the month that Owner receives the approved application for payment from the Owner's Consultant unless a claim has been made against Owner as a result of the CMAR's work or Owner receives notification of intention to file a lien or Owner is entitled to a setoff against the CMAR or the CMAR has defaulted under this agreement. The amount of the payment shall be the amount approved by the Owner's Consultant less retainage of 10%.

6.1.5. Retainage. Retainage shall be administered as required by W. S. 16-6-702. Provided that CMAR has fully performed all of its obligations under this agreement and has not exceeded the guaranteed maximum price, the retainage will be paid to CMAR upon final completion of the project and acceptance by Owner and after all statutory requirements for release of the retainage have been met.

6.2. Withholding Payment. Owner shall have the right to withhold from payments due the CMAR such amounts as are necessary to protect Owner against any loss or damage which may result from CMAR's failure to perform its obligations under this agreement. Notwithstanding any other provision of this agreement, Owner shall not be obligated to make any payment if CMAR is in breach or default under this agreement or if CMAR has failed to promptly pay its subcontractors, materialmen, suppliers or laborers or if Owner in its good faith judgment determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the work under this agreement or if Owner in its good faith judgment determines that the cost to complete the work would exceed the guaranteed maximum price.

6.3. Effect of Payments. No progress payment shall be construed to be a final acceptance or approval of that part of the services or work to which the payment relates or a release of CMAR from any of CMAR's obligations under this agreement or liabilities with respect to such services or work.

6.4. **Audit.** Owner shall have the right to verify and audit the details set forth in CMAR's application for payment either before or after payment therefor by inspecting the books and records of CMAR during regular business hours or examining any reports with respect to the project or interviewing CMAR's business employees or other reasonable action.

6.5. **Subcontractor's Retainage and Advance Payments.** Unless otherwise agreed in writing by Owner, payments by CMAR to subcontractors shall be subject to retention of not less than ten percent (10%) retention for subcontractors. The CMAR shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

6.6. **Final Payment.** Owner shall make final payment to the CMAR when (1) the contract has been fully performed by the CMAR; (2) a final application for payment together with such documentation as may be required by the Owner and Owner's Consultant, which may include lien and claim waivers, and a final accounting for the cost of the work have been submitted by the CMAR and reviewed by the Owner and its representatives; (3) a final certificate for payment has then been issued by the Owner's Consultant; (4) CMAR has filed a sworn statement complying with W. S. 16-6-117 stating that all claims for material and labor performed under the contract have been and are paid for the entire period of time for which final payment is to be made and that if any claim for material and labor is disputed, the sworn statement shall so state. The amount claimed to be due the claimant shall be deducted from the final payment and retained by Owner until determination of the dispute as provided by law; and (5) forty days before the final payment is made, Owner has caused to be published in a newspaper of general circulation in Campbell County, Wyoming once a week for three consecutive weeks and also posted in three conspicuous places on the work a notice setting forth the information required by W. S. 16-6-116. Such final payment shall be made by the Owner not sooner than 41 days after the notice of intent to make final payment is published.

6.7. **Acceptance of Final Payment.** The acceptance of final payment will constitute a waiver of all claims by CMAR against Owner. Owner's failure to make written objections to the certificates of substantial completion and the Owner's or Owner's Consultant's failure to identify defective or incomplete work shall not impair Owner's right to recover for any defective work or breach of this contract by CMAR. The making of final payment by Owner will not constitute a waiver by Owner of any claims against CMAR arising from a breach of this agreement or from unsettled liens or from defective work or failing to comply with the terms of the contract or from CMAR's continuing obligation in the contract documents. If the aggregate of previous payments made by the Owner exceeds the amount due the CMAR, the CMAR shall reimburse the difference to the Owner.

7. **Performance Bond and Payment Bond and Statutory Notice.** CMAR shall

furnish performance and payment bonds as security for the faithful performance and payment of CMAR's obligations under this contract.

7.1. Performance and Payment Bonds. The CMAR shall furnish bonds in the forms attached as Exhibits B and C covering faithful performance of the contract and payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the guaranteed maximum price. These bonds shall remain in effect at least until one year after the date final payment becomes due under this contract. These bonds must be executed by a surety which has an A. M. Best Rating category of ~~%~~Excellent+ and which is named in the current list of ~~%~~Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies+ as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of Treasury. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. All bonds will be obtained from companies which are duly licensed to issue bonds in the State of Wyoming.

7.2. Delivery of Bonds. The CMAR shall deliver the required bonds to the Owner at least three days before the commencement of the construction phase work.

7.3. Statutory Notice. The CMAR shall post on the construction site a prominent sign citing W.S. 16-6-121 and stating that any subcontractor or materialman shall give notice to the CMAR of a right to protection under the bond or guarantee and that failure to provide the notice shall waive the subcontractor or materialman's protection under the bond or guarantee and shall waive any right to a lien for materials or services provided. Any subcontractor or materialman entitled to the protection of a bond or other form of guarantee approved by the Owner under W.S. 16-6-112 shall give notice of his right to that protection to the CMAR. Failure to give notice to the CMAR who has complied with subsections (f) and (g) of W. S. 16-6-121 waives the subcontractor or materialman's protection under the bond or guarantee and waives any right to a lien for materials or services provided. The notice shall be given by the subcontractor or materialman no later than sixty days after the date on which services or materials are first furnished. The notice shall be sent by the subcontractor or materialman to the CMAR by certified mail or delivered to and receipted by the CMAR or his agent. Notice by certified mail is effective on the date the notice is mailed. The notice shall be in writing and shall state that it is a notice of a right to protection under the bond or guarantee. The notice shall be signed by the subcontractor or materialman and shall include the following information: (i) the subcontractor or materialman's name, address and phone number and the name of a contact person; (ii) the name and address of the subcontractor's or materialman's vendor; and (iii) the type or description of materials or services provided.

8. Termination or Suspension. Work may be terminated or suspended as provided in this paragraph.

8.1. **Suspension Without Cause.** Owner may without cause order CMAR in writing to suspend the work. If the suspension is without cause, CMAR may seek an adjustment of the contract time under paragraph 11 to the extent that its work has been adversely impacted by any suspension unless the actions or inactions of CMAR or its subcontractors or suppliers are the reason Owner ordered work suspended.

8.2. **Termination Without Cause.** Owner may without cause terminate this agreement by giving 10 business days prior written notice to CMAR. If Owner terminates this agreement without cause, Owner shall pay CMAR, the cost of any work completed as of the termination date and a prorated portion of the CMAR's construction phase fee based upon the work completed, which payment shall be in full satisfaction of all amounts owed CMAR under this agreement.

8.3. **Termination for Cause.** Owner may terminate this agreement for cause without any liability to CMAR if CMAR commits a material breach of this agreement; fails to timely pay its employees, subcontractors, materialmen or suppliers; or fails to prosecute the work with diligence to insure that the work is completed by the contract time. If Owner terminates this contract for cause and such termination is finally determined to be improper, the termination shall be treated as a termination without cause, and CMAR shall be compensated on the basis provided in paragraph 8.2 above.

8.4. **Remedy.** The payment described in this Section 8 is the sole and exclusive remedy of the CMAR for termination of this agreement.

8.5. **Documents.** Whenever this contract is terminated, CMAR shall provide to Owner all of the documents described in paragraph 4.16.

9. **Owner Provided Material or Equipment.** Sales to and purchases made by political subdivisions in the State of Wyoming are exempt from Wyoming sales and use tax. Owner is a political subdivision of the State of Wyoming. Owner may in its sole discretion elect in writing to purchase certain material or equipment needed for the project and included in the work to be performed by the CMAR. The CMAR will work with the sub-trades to identify major equipment components and to prepare purchase orders for such material or equipment. If Owner makes the election to purchase such material or equipment directly, the contract sum, cost of work, and the guaranteed maximum price will be reduced by an amount equal to the price paid by the Owner for the material or equipment, but the amount so paid by Owner will still be included in the cost of work solely for purposes of calculating the CMAR construction phase fee as defined in paragraph 5.1.4. The parties will execute a change order reflecting the reduction in the contract sum, cost of work and guaranteed maximum price. There will be no change or adjustment to the contract time as a result of such a purchase, and the CMAR will remain responsible for installing the material or equipment and insuring that the material or equipment meets the contract specifications. The CMAR will coordinate and monitor the delivery of the material or equipment to the job site, notify Owner of any delays in a timely

manner, take necessary action with Owner support to avoid delays, and supervise the unloading of the material or equipment at the job site.

10. **Indemnification.** To the fullest extent permitted by law, the CMAR shall indemnify, defend and hold harmless the Owner and its agents and employees or any of them (hereafter referred to as ~~the~~ Indemnitees) from and against all claims, demands, damages, causes of action, liabilities, losses and expenses, including without limitation attorneys' fees and consultants' fees and expenses, arising out of or resulting from performance of the work by CMAR, its subcontractors or anyone employed by them or for whose acts they may be liable, regardless of whether or not such claim, demand, cause of action, damage, liability, loss or expense is caused in part by an Indemnitee. CMAR shall defend each Indemnitee through counsel approved by such Indemnitee in any action or proceeding brought against the Indemnitee by reason of any such claim described herein.

If any claim of lien or stop-notice or any other demand for payment or security therefor, including claims or demands upon performance and payment bond sureties for this agreement, is made or filed with the Owner or the project by any person claiming that CMAR or any subcontractors or supplier or any other person claiming under them has failed to perform its contractual obligations or make payment for any labor, services, materials, equipment, or other item furnished or obligation incurred for or in connection with the work, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim or lien or stop-notice or other demand for which, if established, the Owner or the project might become liable, then Owner shall have the right to retain from any payment then or thereafter due under the contract or to be reimbursed by CMAR for an amount sufficient to (i) satisfy, discharge and defend against any such claim of lien or stop-notice or other demand, or any action or proceeding thereon that may be brought to judgment or award; (ii) make good any such nonpayment, nonperformance, damage, failure or default; and (iii) compensate the Owner for and indemnify it against any and all loss, liability, damage, cost and expense (including attorneys' fees and consultants' fees and costs) sustained or incurred in connection therewith.

If any subcontractors, supplier or other person makes, records, or files or maintains any action on or respecting a claim of mechanic's lien, stop-notice, equitable lien, payment or performance bond, or lis pendens relating to the work, the CMAR shall immediately and at its own expense procure, furnish and record appropriate statutory release bonds which will extinguish or expunge such claim, stop-notice or lis pendens.

11. **Claims.** If the CMAR claims that it is entitled to damages or an adjustment of the contract terms for the payment of money or an extension of the contract time or an adjustment of the guaranteed maximum price or the contract sum, for any reason, including, without limitation, any act or neglect of Owner or Owner's Consultant or of any employee of either or changes ordered in the work or because of conditions encountered at the site which are subsurface or otherwise concealed physical conditions which differ

materially from those indicated in the contract documents or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the contract documents, then CMAR must deliver a written claim to Owner. The written claim must be delivered to Owner within 10 days after the occurrence of the event giving rise to the claim or within 10 days after the CMAR first recognized the condition giving rise to the claim, whichever is earlier. All claims must be delivered to both Owner and Owner's Consultant within the period provided above. Pending resolution of a claim, the CMAR shall proceed diligently with the performance of the contract. Failure of CMAR to file a claim as provided herein shall constitute a waiver of the claim by CMAR.

A claim for an increase in the guaranteed maximum price or the contract sum shall include the CMAR's written statement that the amount claimed covers all amounts to which the CMAR is entitled as a result of the occurrence of the event and include data supporting the amount of the claim in detail. Any claim for an increase in the contract time shall state the extent of the claim with supporting data and shall be accompanied by the CMAR's written statement that the adjustment claim is the entire adjustment to which the CMAR is entitled as a result of the occurrence.

When CMAR is prevented from completing any part of the work within the contract time due to delay beyond the control of CMAR, including, without limitation, any act or omission of Owner or Owner's Consultant or their representative, an extension of the contract time, without notice to sureties, in an amount equal to the time lost due to such delays shall be CMAR's sole and exclusive remedy for such delay. The CMAR shall make no claim for an increase in the guaranteed maximum price or the contract sum or damages for such delay in the performance of this agreement, whether such delays are avoidable or unavoidable. CMAR agrees that such delays shall solely and fully be compensated for by an extension of time to complete performance of the work as provided herein.

If the parties are unable to agree upon the CMAR's claim, the issue shall be resolved as provided in paragraph 22.

If CMAR breaches this agreement, nothing herein shall require Owner to give notice of a claim for damages before pursuing a claim for breach of contract against CMAR.

12. Changes in the Work. Changes in the work may be made by change order or a construction change directive without invalidating this agreement or relieving the CMAR of liability or from its obligations under this agreement.

A change order is a written modification of the contract between Owner and CMAR, signed by the Owner and the CMAR. A change order may change the contract time, the contract sum, the guaranteed maximum price, or the work to be performed.

Upon execution of a Change order by CMAR, CMAR accepts the change order as full compensation for the time and cost of the additional or deleted work and for any delays caused thereby and any claims arising therefrom.

A construction change directive is a written order signed by the Owner directing a change in the work prior to agreement on adjustment, if any, in the guaranteed maximum price, the contract sum or contract time. The Owner may by construction change directive, without invalidating the contract, order changes in the work consisting of additions, deletions or other revisions, the contract sum and contract time being adjusted accordingly. The issuance of a construction change directive does not prejudice any of CMAR's right to relief otherwise available under the contract documents; provided, however, CMAR must preserve those rights by submitting to Owner and Owner's Consultant a written objection to the construction change directive setting forth in detail the reasons for its objections and the contract provisions on which the objection is based within 7 business days of receipt of the directive. If the CMAR does not submit written objections within that time, CMAR will be deemed to have accepted the directive and waived all claims related to the directive and the directive shall have the force and effect of a change order.

If the parties are unable to agree upon the cost or credit to the Owner resulting from a change in the work, the cost or credit shall be determined by the cost of the added or deleted work (using the definition of cost of work provided in Exhibit A).

No change in the work shall be the basis of an addition to the contract sum or to the guaranteed maximum price or a change in the contract time unless and until such change has been authorized by a change order executed and issued in accordance with this agreement. Change orders and construction change directives shall not require notice to or the consent of any surety, and no surety shall be released from its obligations on any bonds issued hereunder as a result of any such change order or directive, and the absence of such notice or consent shall not relieve such sureties of any of their obligations to Owner.

Article 13. Insurance

13.1 Without limiting any of the obligations or liabilities of the CMAR, CMAR shall secure and maintain the following insurance from an insurance company or companies licensed to write insurance in Wyoming with a minimum ~~A~~. M. Best Rating+of at least A- as will protect CMAR, its subcontractors, the Owner and the Owner's Consultant and their respective agents and employees from claims for bodily injury, death or property damage which arise from operations and completed operations under this Agreement. Such coverage shall be written for claims arising out of all premises/operations, subcontracted operations, products/completed operations, and all liability assumed by the CMAR under any contract or agreement. CMAR shall not commence any work until all required insurance has been obtained and certificates of insurance, with binders or

certified copies of insurance policies, have been filed with the Owner and Owner's Consultant.

13.2 Failure of Owner to object to the coverage of CMAR's insurance within the time provided shall not relieve CMAR from its obligation to provide insurance which complies with the contract documents.

13.3 CMAR shall procure and maintain, at its own expense, with companies satisfactory to Owner, the following insurance coverage:

Workers' compensation as required by state law.

Employer's liability with an aggregate limit of \$1,000,000.00.

Commercial General Liability in the amount of not less than \$1,000,000.00 combined single limit for bodily injury and/or property damage liability per occurrence and \$2,000,000.00 aggregate including:

- a. Premises and operations coverage;
- b. Owners and CMARs protective coverage;
- c. products and completed operations coverage;
- d. broad form property damage coverage, including completed operations;
- e. blanket contractual coverage;
- f. personal injury coverage;
- g. an endorsement naming Owner as additional insured;
- h. an endorsement affording 30 days' notice of cancellation to Owner in the event of cancellation or material reduction in coverage;
- i. an endorsement providing that such insurance as afforded under CMAR's policy is primary insurance as respects Owner and that any other insurance maintained by Owner is excess and noncontributing with the insurance required hereunder.

Business auto liability in the amount of \$1,000,000.00 combined single limit for bodily injury and/or property damage, including:

- a. Owned autos.
- b. Hired or borrowed autos.

- c. Non owned autos.
- d. An endorsement affording 30 days notice of cancellation to Owner in event of cancellation or material reduction in coverage.

Excess or umbrella bodily injury and/or property liability insurance with limits not less than \$9,000,000.00 per occurrence for bodily injury and/or property damage liability listed in the general liability, employer's liability, and comprehensive auto liability policies required as underlying policies and including:

- a. As broad as primary endorsement.
- b. An endorsement naming Owner as additional insured.
- c. An endorsement affording 30 days notice to Owner of cancellation or material reduction in coverage.
- d. An endorsement providing that any insurance maintained by Owner is excess and noncontributing with the insurance required hereunder.

Professional liability insurance for claims arising from the CMAR's performance as construction manager under this agreement which shall be for not less than \$3,000,000 per claim and in the aggregate with a deductible not to exceed \$25,000.00. The insurance policy shall include prior acts coverage sufficient to cover all services rendered by the CMAR under this agreement. The insurance shall include an endorsement affording 30 days notice to Owner of cancellation or material reduction in coverage.

CMAR shall maintain all of the foregoing insurance coverage in force until final completion of the Work; provided, however, the products and completed operations coverage required above shall be maintained for 3 years following final completion of the Work.

13.4 If the insurance is written with a stipulated amount deductible under the terms of the policy, CMAR shall pay the difference attributable to such deductible in any payment made by the insurance carrier on claims paid by this insurance.

13.5 All such policies shall contain provisions to the effect that in the event of any loss or damage, the insurers will have no rights recovery against Owner or its employees or representatives. CMAR waives all rights against the Owner and its employees, representatives, and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the work; and in addition, waives such rights against

Subcontractors, Owner's Consultant, Owner's Consultant's consultants and all other persons and entities to be listed as insureds or additional insureds under such policies for losses and damages so caused. CMAR shall waive all rights against Owner and Owner's Consultant and their employees and agents for damages caused by causes of loss to the extent covered by insurance obtained by CMAR, and the policies provided by CMAR hereunder shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

13.6 Owner is not required to provide any insurance as a part of this contract.

14. **Liquidated Damages.** Owner and CMAR recognize that time is of the essence in this agreement, and that the Owner will suffer financial loss if the work is not completed within in the times specified in this contract, plus any extensions thereof allowed, in accordance with this contract. They also recognize the delays, expense of difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the work is not completed on time.

Accordingly, instead of requiring any such proof, the Owner and CMAR agree that, as liquidated damages for delay (but not as a penalty), the CMAR shall pay the following: (1) if CMAR neglects, refuses or fails to achieve substantial completion by the date of substantial completion established under this document, CMAR shall pay Owner \$1000.00 for each calendar day that expires after the time specified as the date of substantial completion of the work and (2) after substantial completion, if the CMAR shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by Owner, the CMAR shall pay the Owner \$1000.00 for each calendar day that expires after the time specified for completion and readiness for final payment of all work. Liquidated damages will continue to accrue even if CMAR is terminated due to breach of this agreement. The liquidated damages may be deducted by Owner from the CMAR's progress payments and/or final payment or otherwise collected by Owner.

15. **Warranty.** CMAR warrants that the materials and equipment supplied by CMAR will be new and of good quality and free from defects and that all work done by CMAR will be in accordance with this contract and will be free from defects in workmanship and material. Nothing in this warranty will limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this contract. CMAR's warranty shall be for two years from the date of substantial completion. The two year period does not constitute a period of limitations with respect to any rights or remedies which Owner may have with respect to any breaches of this agreement by CMAR.

16. **Limitation on Liability.** Notwithstanding any other provision of this

agreement, Owner's liability to CMAR for any claimed breach of this agreement or breach of any alleged representations or warranties, whether expressed or implied, shall never exceed the contract sum less any contract payments made by Owner to CMAR. Owner shall not be liable to CMAR for consequential damages, loss of bonding capacity, loss of profits from other transactions or contracts, impairment of capital, loss of financing, loss of business, or loss of reputation.

17. **Waiver.** Unless Owner executes a written document expressly stating the Owner waives a provision of this contract, Owner shall not be deemed to have waived the requirement that CMAR comply with all of the terms and conditions of this agreement, including, without limitation, the written claim and notice provisions of this agreement, and no waiver of Owner's rights or modification of this agreement shall be implied by the course of conduct of the parties.

18. **Taxes.** CMAR shall pay all sales, use and other taxes required to be paid by CMAR in accordance with the laws and regulations of the governmental entities in the State of Wyoming.

19. **Time.** Time is of the essence in this agreement.

20. **Assignment.** CMAR may not assign this contract or delegate CMAR's duties under this contract to a third party without the prior written consent of Owner.

21. **Default.** If either party defaults under this agreement, the other party shall give the defaulting party written notice of the default and specify the requirements necessary to cure the default. If the default is not cured within 5 business days after notice of default, the nondefaulting party shall be entitled to request mediation as provided in paragraph 22.

If CMAR defaults or neglects to carry out the work in accordance with the contract documents and fails within a 10 day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, then Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies at CMAR's expense or terminate this agreement. Owner shall have the right to offset any sums paid by Owner to correct such deficiencies from any amount owed to CMAR.

In the event of a default under this agreement, CMAR shall be responsible for all costs and expenses incurred by Owner in enforcing this agreement, including, without limitation, reasonable attorney fees and expert witness fees.

22. **Mediation.** If a dispute arises between the parties relating to this agreement, they will not initiate litigation until they first submit the dispute to mediation. When a dispute arises which the parties are unable to resolve between themselves, the

parties shall proceed in good faith to jointly appoint an acceptable mediator and will share equally in the cost of such mediator. If the parties are unable to agree upon the mediator, either party may petition the court for appointment of the mediator under Wyo. R. Civ. P. 40. The mediation shall be privileged and confidential as provided by Wyoming law. If the mediation fails to resolve the dispute within 20 calendar days from the date the mediator is appointed, then the parties may enforce their rights in any manner allowed by law and this agreement.

23. Miscellaneous Provisions.

23.1. CMAR represents and warrants to Owner that it has familiarized itself with the nature and extent of the contract documents, work, site, locality, and all local conditions and laws and regulations which in any manner may affect cost, progress, performance or furnishing of the work and that it has reviewed and checked all information and data shown or indicated on the contract documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities.

Existing underground installations such as underground utilities and buried structures will be indicated on the drawings; however, there is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy or completeness thereof is expressly disclaimed. The CMAR shall use its own information and shall not rely solely upon the information shown in the drawings and contract documents. CMAR has correlated the results of all such observations, examinations, investigations, tests, reports, and studies with the terms and conditions of the contract documents.

23.2. CMAR represents and warrants to Owner as follows: (1) CMAR is authorized to engage in business in the State of Wyoming and has and will maintain all licenses, permits and other authorizations necessary to act as construction manager at risk for this project, (2) CMAR is professionally and fully qualified to act as construction manager at risk on this project, (3) CMAR has the expertise, experience and knowledge as well as the necessary plant, personnel, equipment and financial capability to perform its obligations under this contract.

23.3. The work shall be in accordance with approved submittals except that the CMAR shall not be relieved of responsibility for deviations from requirements of the contract documents by the Owner's Consultant's approval of shop drawings, product data, samples or similar submittals unless the CMAR has specifically informed the Owner and Owner's Consultant in writing of such deviation at the time of submittal and (1) the Owner and Owner's Consultant have given written approval to the specific deviation as a minor change in the Work or (2) a change order or construction change directive has been issued authorizing the deviation.

23.4. If the contract documents require or permit the consent of a surety before a payment is made to CMAR, Owner may waive the requirement of surety consent and make the payment to CMAR without notice to the surety and such waiver and payment shall not relieve the surety of its obligations to Owner or discharge the surety in whole or in part.

23.5. CMAR will correct all defective work upon receipt of notice from Owner or Owner's Consultant. The CMAR shall promptly remedy damage and loss to property caused in whole or in part by the CMAR, a subcontractor, a sub-subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CMAR is responsible.

23.6. If a portion of the Work is covered contrary to the Owner's or Owner's Consultant's request or to requirements specifically expressed in the contract documents, it must, if required in writing by the Owner, be uncovered for the Owner's Consultant's examination and be replaced at the CMAR's expense without change in the Contract time.

24. **Definitions.** The following terms shall have these definitions:

Owner's Consultant+ shall mean the Owner's architect or other consultant employed by Owner to work on the project and designated by Owner in writing to CMAR.

Contract documents+ are this agreement and the plans, drawings and specifications for the project prepared by the Owner's Consultant and approved by Owner.

Contract sum+ means the cost of work as defined in paragraph 5.1.3 plus the CMAR's construction phase fee, which is defined in paragraph 5.1.4.

Contract time+ shall mean the time for substantial completion and the time for final completion of the project.

Final completion+ is the date all of the work required by the contract documents, including punch list items, has been completed in accordance with the contract documents.

Guaranteed maximum price+ is the amount which the CMAR guarantees to be the maximum amount due the CMAR for the performance of the construction work. All costs for performing the work which exceed the guaranteed maximum price and are not authorized by change order shall be paid by the CMAR.

Substantial completion+ is the date on which the construction work is sufficiently complete that Owner can occupy and use the project for the purposes for which it is

intended. Upon substantial completion, all work must be complete except for punch list items which are minor items of work identified by the Owner's Consultant and approved by the Owner which are to be completed after substantial completion and before final completion which do not prevent the project from being fully used for the purposes for which it was intended and which will not prevent the issuance of a certificate of occupancy.

Work is the provision of all labor, materials, equipment, supervision, services, tools, water, heat, cooling, storage, fuel, utilities, transportation, permits, bonds, insurance, and other facilities and services necessary for the proper construction and completion of the project in strict accordance with the contract documents.

25. Governing Law and Enforcement. In performing this agreement, CMAR will comply with all laws, rules, and regulations which apply to the work. This agreement shall be governed by Wyoming law. A Wyoming state court of competent jurisdiction in Campbell County, Wyoming shall have exclusive jurisdiction of all disputes arising out of this agreement.

26. Governmental Immunity. By entering into this agreement, Owner does not waive any governmental immunity to which Owner is entitled, and Owner expressly reserves the right to assert governmental immunity to any claims arising under or out of this agreement.

27. Public Contract Requirements. To the extent such statutes are applicable, CMAR will comply with W.S. 16-6-101 through 16-6-107. Wyo. Stat. §16-6-103 states that a resident contractor shall not subcontract more than thirty percent (30%) of the work covered by this contract to nonresident contractors. W.S. 16-6-104 states that Wyoming made materials and products and Wyoming suppliers of products and materials of equal quality and desirability shall have preference over materials or products produced or supplied outside the State of Wyoming. W. S.16-6-106 states that this contract is subject to the following: Reference is hereby given to materials, supplies, agricultural products, equipment, machinery, and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside the state.+ W. S.16-6-107 states that all public buildings or other public structures constructed in Wyoming shall be constructed and maintained by material produced and manufactured in Wyoming if Wyoming materials are suitable and can be furnished in marketable quantities; provided, however, this provision shall not be enforced in any manner which conflicts with any federal statutes or rules or regulations. CMAR shall comply with W.S.16-6-110 relating to limitation on work hours and overtime. CMAR shall comply with W.S.16-6-203 which provides that in the construction, reconstruction, improvement, enlargement, alteration or repair of any public works project or improvement for any political subdivision or governmental unit of the State of Wyoming, Wyoming labor shall be used except other laborers may be used when Wyoming laborers are not available for employment from

within the state or are not qualified to perform the work involved; provided, however, this provision shall not be enforced in any manner which conflicts with any federal statutes, rules or regulations. CMAR shall comply with the provisions of W.S. 16-6-708.

28. **Entire Agreement.** This document represents the entire and integrated agreement between Owner and CMAR and may be amended only by a written instrument signed by both parties. CMAR represents and warrants that in entering into this agreement it is not relying upon any statement or representation of Owner or its agent which CMAR deems material to its decision to enter into this agreement. No provision of this agreement shall be construed against or in favor of either party because one of the parties is considered to be the drafter of the provision.

Dated this ____ day of _____, 20__.

Campbell County Hospital District

By: _____

Title: _____

CMAR:

By: _____

Title: _____

EXHIBIT A

Cost of Work - Construction Phase.

1. The term %cost of work+ shall mean costs reasonably and necessarily actually incurred by the CMAR in the performance of the construction phase of the work. Costs shall be at rates not higher than those customarily paid at the place of the project except with the prior written consent of the Owner. The cost of the work shall include only the items set forth in this Exhibit A.
2. The following labor and administrative costs are included in the cost of work:
 - a. Reasonable and customary wages of construction workers directly employed by the CMAR to perform the construction work at the site, or, with the Owner's prior written agreement, at off-site workshops.
 - b. Reasonable and customary wages or salaries of the CMAR's supervisory administrative personnel but only when stationed at the site with the Owner's prior written agreement.
 - c. Costs paid or incurred by the CMAR for labor costs arising out of taxes, insurance, and benefits which are required by law or collective bargaining agreements or otherwise customary so long as such costs are based on wages and salaries which are properly included in the cost of work
3. Payments made by the CMAR to subcontractors and vendors in accordance with the requirements of the subcontracts or purchase orders are included in the cost of work.
4. The following costs of materials and equipment incorporated in the completed construction are included in the cost of work:
 - a. Costs of material and equipment incorporated or to be incorporated in the work, including transportation charges and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the work or, at Owner's option, CMAR shall sell such materials and deduct the gross proceeds from the cost of work.
 - b. Costs of materials, supplies, temporary facilities, equipment and hand tools except for those customarily owned by construction workers, all provided at the site by CMAR, if such items are fully consumed in the construction of the work and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include transportation, installation, minor maintenance costs, and

removal. If the item is not fully consumed, then the cost shall be based on the cost of the item minus its fair market salvage value.

c. Reasonable and customary rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction works, all provided at the site by CMAR, and may include transportation, installation, and minor maintenance costs and removal so long as Owner has approved such items and the rental rates in advance in writing.

d. Reasonable and customary costs of site debris removal and disposal costs in accordance with applicable laws and regulations.

5. The following miscellaneous costs are included in the cost of work:

a. Governmental sales and use taxes directly attributable to the work. Owner is a governmental entity, and CMAR shall avail itself of any exemptions which may exist for such taxes based on Owner's status.

b. Permit and inspection fees, except to the extent that the Owner as a governmental agency may be exempt from such fees.

c. Premiums for insurance and bonds to the extent directly attributable to this contract and the work except as otherwise provided herein.

d. Testing fees required by this contract or the work except those relating to nonconforming work.

e. Forfeited deposits but only if such deposits have been forfeited in the absence of any fault or negligence of the CMAR.

f. Other costs incurred in the performance of the work if and to the extent approved in advance in writing by the Owner at Owner's sole option and discretion.

No other costs shall be included in the cost of work. Any other costs of expenses required for the construction of the project are included within and are compensated for the amount paid for the CMAR's construction phase fee as defined in paragraph 5.1.4. By way of illustration the following are some of the costs and expenses which are not included in the cost of work and will not be paid for by Owner:

a. Costs including, but not limited to, the failure to perform of any subcontractor or the bankruptcy or insolvency of any subcontractor.

b. Legal and administrative costs to review and negotiate these contract documents.

- c. Travel and subsistence expense of CMAR, its officers or employees incurred while traveling between the project and CMAR's principal or branch offices, and travel in the metropolitan area of the project.
- d. Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CMAR.
- e. Costs incurred by CMAR resulting from the failure of CMAR or its subcontractors to coordinate their work.
- f. Costs resulting from failure of CMAR or any subcontractor to procure and maintain insurance as and to the extent required by the contract documents.
- g. Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the work site office at the project and then only as specifically provided herein.
- h. Any and all overhead expense, or office expense at any location, except work site office expense at the project to the extent specifically included herein.
- i. Costs related to CMAR's indemnification obligations pursuant to this contract.
- j. The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the project.
- k. Any cost arising out of the fault or negligence of CMAR, its subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, and damage to persons or property.
- l. Liquidated or actual damages imposed by Owner for failure of CMAR to complete the work within the contract time.
- m. Payments to workers or supervisory personnel over and above their regular salary such as bonuses, incentives, profit sharing or severance pay.
- n. Premiums for builder's risk insurance.
- o. Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the guaranteed maximum price to be exceeded.

The cost of work to be paid by Owner shall be credited with the following items:

a. Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the CMAR, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the work or when no longer required, all tools, construction equipment and materials purchased for the work shall be sold and the CMAR shall use its best efforts to obtain the highest price in respect of such sales.

b. If Owner makes funds available to CMAR, discounts earned by the CMAR through advance or prompt payments. The CMAR shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The CMAR shall purchase materials for this project in such quantities as will provide the most advantageous prices to the Owner.

c. Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the CMAR.

d. Rebates, discounts, or commissions allowed to and collected by the CMAR from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return or materials, or on bond premiums, or insurance and sales taxes.

e. CMAR shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the CMAR. Should CMAR not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from CMAR, including, but not limited to, by deducting the amount from payments due the CMAR.

Exhibit B

Performance Bond

_____ (~~%Contractor+~~) whose address is _____ and Campbell County Hospital District (~~%Owner+~~) entered into a Construction Manager At Risk Agreement dated the _____ day of _____, 2014 for the construction of the Pioneer Manor skilled nursing and rehabilitation center in Gillette, Wyoming (hereafter referred to as the ~~%Contract.~~)

Contractor and _____ (insert name and address of Surety) (~~%Surety+~~), jointly and severally, bind themselves, their successors and assigns to Owner in the amount of \$ _____ for the full and faithful performance of the Contract by Contractor.

If Contractor shall promptly, fully and faithfully perform the Contract according to its terms, then Surety and Contractor shall have no obligation under this Bond; otherwise, the obligations under this Bond shall remain in full force and effect.

If Contractor is in default under the Contract, Surety shall remedy the default within 15 days after receipt of written notice from Owner of the existence of the default, and Surety will cause the Contract to be promptly, fully and faithfully performed according to its terms. Surety's obligations to Owner under this Bond include, without limitation, the responsibility for correction of defective work and completion of the Contract, the obligation to pay Owner additional legal, design professional and delay costs incurred by Owner resulting from Contractor's default or Surety's failure to perform as promised herein, and the obligation to pay to Owner the liquidated damages provided in the Contract

No extension of time, change, alteration, modification or addition to the Contract or of the work required thereunder and no payment under the Contract or waiver of any of the provisions of the Contract shall release, exonerate, or discharge Surety on this Bond or in any way affect Surety's obligations under this Bond, and Surety waives notice of any such extension, change, alteration, modification, addition, payment or waiver.

Any suit under this Bond must be initiated before the expiration of two (2) years from the date on which final payment under the Contract falls due. A Wyoming state court of competent jurisdiction located in Campbell County, Wyoming shall have exclusive jurisdiction over all disputes arising out of this Bond. If suit is successfully brought on this Bond by Owner, Surety will pay Owner's reasonable attorney fees and

costs incurred in such litigation.

Contractor

By: _____

Title: _____

Date: _____

Witness: _____

Surety

Date: _____

Witness: _____

Exhibit C

Payment Bond

_____ (Contractor), whose address is _____ and Campbell County Hospital District (Owner) entered into a Construction Manager At Risk Agreement dated the _____ day of _____, 2013, for the construction of the Pioneer Manor skilled nursing and rehabilitation center in Gillette, Wyoming (hereafter referred to as the Contract.)

Contractor and _____ (insert name and address of Surety) (Surety), jointly and severally, bind themselves, their successors and assigns to Owner in the amount of \$_____ to promptly pay for all work, labor, materials, equipment or goods furnished for use in performance of the Contract and promptly pay all taxes, excises, licenses, assessments, contributions, penalties and interest lawfully due to the State of Wyoming or any political subdivision associated with the Contract.

If Contractor shall promptly pay for all work, labor, materials, equipment or goods furnished for use in performance of the Contract and promptly pay all taxes, excises, licenses, assessments, contributions, penalties and interest lawfully due to the State of Wyoming or any political subdivision associated with the Contract, then Surety and Contractor shall have no obligation under this Bond; otherwise, the obligations shall remain in full force and effect.

This bond has been submitted to comply with a statutory requirement in the State of Wyoming, and any provisions in this Bond which conflict with the statutory requirement shall be deemed deleted and any provisions required for this Bond to conform to the statutory requirement are deemed incorporated herein.

No extension of time, change, alteration, modification or addition to the Contract or of the work required thereunder and no payment under the Contract or waiver of any of the provisions of the Contract shall release, exonerate, or discharge Surety on this Bond or in any way affect Surety's obligations under this Bond, and Surety waives notice of any such extension, change, alteration, modification, addition, payment or waiver.

Any suit under this Bond must be initiated before the expiration of two (2) years from the date on which final payment under the Contract falls due. A Wyoming state court of competent jurisdiction located in Campbell County, Wyoming shall have exclusive jurisdiction over all disputes arising out of this Bond. If suit is successfully brought on this Bond by Owner, Surety will pay Owner's reasonable attorney fees and costs incurred in such litigation.

Contractor

By: _____

Title: _____

Date: _____

Witness: _____

Surety

Date: _____

Witness: _____

Exhibit D
CMAR Personnel

Exhibit E
Documents Describing Project
Including Drawings and Specification