

**DRAFT**

**DIVISION II**  
**GENERAL CONDITIONS TO THE CMAR CONTRACT**

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## DIVISION II

### GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT

#### ARTICLE 1 GENERAL CONDITIONS

##### 1.1 DEFINITIONS, CORRELATION AND INTENT

**1.1.1 Definitions.** Unless otherwise provided herein, capitalized terms used in this Contract, and not otherwise defined herein, have the respective meanings set forth in the Contract Documents that make up the entire agreement and incorporated herein by this reference.

**1.1.2 Entire Agreement.** The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

**1.1.3 Contractual Relationship.** The Contract shall not be construed to create a contractual relationship of any kind (1) between the Architect and CMAR, (2) between the Owner and a Subcontractor, or (3) between any persons or entities other than the Owner and CMAR. The Architect, however, shall be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. The CMAR is not a third party beneficiary to any agreement among or between the Owner and Architect. The Architect's performance of duties under such agreements is solely for the benefit of parties identified as beneficiaries under such agreements.

**1.1.4 Intent.** The intent of the Contract is to include all items necessary for the proper execution and completion of the work by the CMAR.

**1.1.5 Supplementary Instructions.** The Architect will issue written interpretations necessary for the proper execution of the work in the form of Supplementary Instructions with reasonable promptness. Supplementary Instructions may either be instructions, drawings or additional information but shall not change the Contract Sum or Contract Time without subsequently executed Change Orders (collectively "Supplementary Instructions").

**1.1.6 Requests for Clarification.** The CMAR shall submit requests for clarification of the Contract to the Architect.

**1.1.7 Discrepancies in Contract.** If there is any discrepancy, inconsistency or ambiguity in the quality or quantity of the work or materials required under the Contract, the CMAR shall (1) immediately bring such discrepancy, inconsistency or ambiguity to the attention of the Architect, and (2) provide the better quality of or greater quantity of the work or materials, without an increase in the Contract Sum, unless otherwise directed in writing by the Architect or the Owner. If the Architect or the Owner accepts the lower quality or quantity of work or materials, the CMAR shall remit to the Owner the difference in cost between the better quality or greater quantity and such lower quality or lesser quantity.

**1.1.8 Organization of Specifications and Drawings Not to Control Division of Work.** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the CMAR in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

**1.1.9 CMAR Solely Responsible for Division of Work.** The CMAR is solely responsible for the division of the work among Subcontractors. Neither the Owner nor the Architect will act as arbiter as to which trade or Subcontractor is to furnish or install the various items indicated or required to complete the work. The CMAR shall make necessary arrangements to reconcile any and all labor conflicts without delay, damage or cost to the Owner and without recourse to the Architect.

**1.1.10 Technical and Industry Meanings.** Unless otherwise stated in the Contract, words that have well-known technical or construction industry meanings are used in the Contract in accordance with such recognized meanings.

**1.1.11 Current Standards.** Where a reference in the Contract to an American Society for Testing and Materials Standard (ASTM), American National Standards Institute Standard (ANSI), federal specification or other recognized standard does not include the date of the standard, the edition current as of the date of issuance of the permit for the work shall apply. No consideration will be given to claimed ignorance as to what a cited standard contains, since the CMAR and each Subcontractor is considered to be experienced and familiar with the generally accepted, published standards of quality and workmanship for its own trade. Requirements of such referenced standards form a part of the Specifications to the extent indicated by the references thereto.

## **1.2 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain the property of the Owner. The Drawings and Specifications and the design reflected therein shall be kept strictly confidential and shall not be disclosed or released except as necessary for the performance of the work. The CMAR may retain one record set. Neither the CMAR nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications or other documents prepared by the Architect. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the CMAR's record set, shall be returned to the Owner upon completion of the work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the CMAR, are for use solely with respect to this Project. They are not to be used by the CMAR or any Subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner. The CMAR and its Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect necessary for execution of the work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

## **ARTICLE 2      OWNER**

### **2.1      INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**2.1.1 Financial Arrangements.** The Owner shall, at the request of the CMAR, furnish to the CMAR reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

**2.1.2 Survey and Work Milestone Dates.** The Owner shall furnish a survey of the Site and work Milestone Dates, if any, required for performance of the work.

**2.1.3 Copies.** The CMAR will be furnished, free of charge, three (3) copies of plans, project specifications and addenda, concerning clarifications, proposed changes and changes. Additional sets can be purchased from PRI Graphics, 735 East Brill Street Phoenix, AZ 85006; 602-393-3131, FAX 602-393-4242.

**2.1.4 Communication with CMAR.** The Owner shall forward communications to the CMAR either through the Architect or directly.

### **2.2      OWNER'S RIGHT TO STOP THE WORK.**

If the CMAR fails to perform or correct work that is not in accordance with the requirements of the Contract or does not allow other Contractors to timely perform their work, the Owner may order the CMAR to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the CMAR or any other person or entity.

### **2.3      OWNER'S RIGHT TO CARRY OUT THE WORK.**

The Owner shall have the right to contact the CMAR's Surety if the Owner determines that the CMAR is not performing in accordance with the Contract. If the CMAR defaults or neglects to carry out the work in accordance with the Contract or fails to commence and continue correction of such default or neglect with diligence or promptness, the Owner may, after forty eight (48) hours written notice to the CMAR and its Surety, require the Surety to promptly assume the obligations of the Contract. Should the Surety fail to assume the obligations within five (5) calendar days after receipt of the written notices then Owner, without prejudice to any other remedy it may have, may correct such nonconforming work. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CMAR or the Surety all costs of correcting such nonconforming work, including but not limited to, compensation for the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the CMAR or its Surety are not sufficient to cover such amount, the CMAR or its Surety shall pay the difference to the Owner within thirty (30) days after the Owner's invoice therefore.

**ARTICLE 3      CMAR****3.1      REVIEW OF CONTRACT AND FIELD CONDITIONS BY CMAR.**

**3.1.1 Notice of Errors.** The CMAR warrants that he has carefully reviewed the Contract, including the work Milestone Dates, if any, and all documents pertaining to the work, including but not limited to the plans, Specifications and the work Milestone Dates, and that he is satisfied as to the feasibility and correctness of the Contract, including the work Milestone Dates, to perform the work within the Contract Time. The CMAR shall immediately report to the Architect any errors, inconsistencies or omissions discovered in the Contract, including the work Milestone Dates. If the CMAR performs any construction activity containing an error, inconsistency, or omission that the CMAR recognized or should have recognized through the exercise of reasonable diligence, without reporting such error, inconsistency or omission to the Architect, the CMAR shall assume responsibility for such performance and shall bear the costs for correction.

**3.1.2 Examination of Site.** The CMAR warrants that he has visited and examined the character of the Site and any existing structures and/or has satisfied himself as to the nature of the work and all matters which could in any way affect the work. The CMAR shall take field measurements and verify field conditions and shall compare such field measurements and conditions and other information known to the CMAR with the Contract before commencing the work. Errors, inconsistencies or omissions discovered shall be reported to the Architect immediately. The Architect or Owner does not guarantee the accuracy of grades, elevations, dimensions, or locations on work installed by other Contractors. The CMAR shall verify the accuracy of all grades, elevations, dimensions and locations relating to the work. In cases of interconnection of the CMAR's work with other work, it shall verify at the Site all dimensions relating to such other work. The CMAR shall promptly rectify any error due to the CMAR's failure to verify the accuracy of such grades, elevations, location or dimensions without any additional cost to the Owner.

**3.1.3 CMAR License and Compliance with Law.** The CMAR warrants (1) that it is licensed under the laws of the State of Arizona to perform the work, and (2) that it is familiar and will comply with all applicable laws, statutes, ordinances, building codes, rules and regulations and lawful orders of public authorities in performing the work, including but not limited to environmental laws and A.R.S. Title 34 as amended.

**3.1.4 Contract Compliance with Law.** If the CMAR observes that portions of the Contract are at variance with applicable laws, statutes, ordinances, building codes, or rules and regulations, the CMAR shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the CMAR performs work it knows or should know to be contrary to laws, statutes, ordinances, building codes, or rules and regulations without such notice to the Architect and Owner, the CMAR shall assume full responsibility for such work and shall bear all damages, losses, costs and expenses attributable thereto.

**3.1.5 CMAR Compliance with Contract.** The CMAR shall perform the work in accordance with the Contract and in a first class and workmanlike manner. In the event that the CMAR fails to do so, the Owner may withhold payments to protect the Owner from loss, regardless of whether payment has previously been made for the work in question.

**3.2      SUPERVISION AND CONSTRUCTION PROCEDURES.**

**3.2.1 CMAR to Supervise Work.** The CMAR shall supervise and direct the work using the CMAR's best skill and attention. The CMAR shall be solely responsible for and have control over construction means, methods,



techniques, sequences, safety, and procedures associated with its work and for coordinating all portions of the work under this Contract. The CMAR shall designate in writing and assign to the Project a qualified and experienced project superintendent, who shall be fully authorized to act and receive communications on the CMAR's behalf. The superintendent shall be present on site at all times necessary or appropriate to adequately supervise and coordinate the work.

**3.2.2 Acts and Omissions.** The CMAR shall be responsible to the Owner for acts and omissions of the CMAR's employees, Subcontractors and their agents and employees, and other persons performing portions of the work under a contract with the CMAR.

**3.2.3 Duty to Perform.** The CMAR shall not be relieved of obligations to perform the work in accordance with the Contract either by activities or duties of the Architect in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CMAR.

**3.2.4 Duty to Inspect.** The CMAR shall inspect portions of the Project related to the CMAR's work in order to determine that such portions are in proper condition to receive subsequent work.

**3.2.5 Limitation on Liability.** CMAR acknowledges that neither the Owner nor Architect nor any of their respective agents, employees, successors or assigns shall control the day-to-day operations of the CMAR and shall not determine construction means, methods, techniques or procedures or safety precautions and programs in connection with the work. CMAR agrees that neither the Owner nor Architect nor any of their respective agents, employees, successors or assigns shall be responsible for the failure of the CMAR to perform the work in accordance with the Contract or with the laws, ordinances, rules, permit conditions, regulations or lawful orders of any governmental agency having regulatory authority over the manner, methods or means of performance of the work.

### **3.3 LABOR AND MATERIALS.**

**3.3.1 CMAR to Provide.** The CMAR shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, storage and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

**3.3.2 Skilled Labor.** The CMAR shall enforce strict discipline and good order among the CMAR's employees and other persons carrying out the Contract. The CMAR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**3.3.3 Standard of Quality.** Wherever materials, products, articles, equipment systems or similar items are identified by reference to proprietary terms or by a similar reference, it is intended to establish the minimum standard or measure of quality that has been determined as requisite or intended for the work.

**3.3.4 E-verify Requirements.** To the extent applicable under Arizona Revised Statutes § 41-4401, the CMAR and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Contractors or its Subcontractors failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the Authority.

### 3.4 SUBSTITUTION OF PRODUCTS.

**3.4.1 Requests for Substitutions.** After the Contract has been executed, the Owner and Architect may consider, but shall have no obligation to consider, a formal request for the substitution of products in place of those specified under the conditions set forth herein and those set forth in Division VI, Technical Specifications. The decision in the first instance on acceptance or rejection of proposed alternate, substitute or similar materials, products, equipment or systems shall be vested in the Architect, and ultimately with the Owner, whose decision shall be final and binding.

**3.4.2 Conditions for Substitutions.** By making requests for substitutions, the CMAR (1) represents that the CMAR has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, (2) represents that the CMAR will provide the same warranty for the substitution that the CMAR would for that specified, (3) certifies that the cost data presented is complete and includes all related costs under the Contract except the Architect's analysis and redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent, and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

**3.4.3 Criteria for Acceptance or Rejection of Substitutes.** Acceptance or rejection of proposed alternate, substitute, or similar materials, products, equipment or systems for use may be based on the construction, design, function, type, size, capacity, performance, strength, durability, finish, aesthetic quality, the Owner's standard for repair, replacement and maintenance or other characteristics or criteria approved by the Owner.

**3.4.4 Expense for Modification.** The CMAR proposing the substitution shall pay any modification to the Contract or work necessary as a result of the use of an approved alternate or substitute.

**3.4.5 Rejection of Substitute.** If any alternate or substitute is not approved, the CMAR shall use the specified material, product, equipment or system without adjustment to the Contract Sum or Contract Time.

### 3.5 WORK HOURS.

Except as otherwise provided in the Contract, work can be performed six (6) days per week, excluding Sundays, except for Holidays. Refer to Special Provision Specification section 30.02 to the limitations of work during the Holidays. Notwithstanding the foregoing, in the event of emergency or when required to complete the work in accordance with the work Milestone Dates, if any, work may be performed on night shifts, overtime, weekends, or Holidays, provided that permission to do so has been obtained from the Architect and confirmed in writing by the Owner within 72 hours of the commencement of such work. The CMAR will not be entitled to additional compensation for work performed outside of regular working hours, except to the extent the Owner approves such compensation in advance. If so approved, such compensation shall in such event cover only the direct cost of the premium portion of the time involved and not overhead and profit. In no event will CMAR be entitled to additional compensation for work performed outside regular hours where occasioned by delays, need for repairs or other causes attributable to CMAR or its Subcontractors. Notwithstanding the foregoing and unless overtime has been requested by the Owner, the CMAR shall bear all costs of standby contractors or subcontractors, if any. In the event the CMAR performs any of the work on night shifts, overtime, weekends or holidays, the CMAR shall comply with all laws, ordinances, codes, rules, and regulations applicable thereto (including, without limitation, those relating to noise).

### 3.6 WARRANTY.

**3.6.1 Free from Defects.** The CMAR warrants to the Owner and Architect that (1) materials and equipment furnished under the Contract will be of first quality and new, (2) the work will be free from defects, and (3) the work will conform to the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty is in addition to and not limited by the provisions of Section 12.2.

**3.6.2 Assignment of Warranties.** The CMAR shall assign to the Owner, before Final Payment is due, all manufacturer's warranties relating to equipment, materials, and labor used in the work.

### 3.7 TAXES.

**3.7.1** The CMAR shall pay any and all sales, consumer, use, transaction privilege, and similar taxes on all monies owed for the Work or portions thereof provided by the CMAR.

**3.7.2** The Phoenix-Mesa Gateway Airport Authority has been certified by the State of Arizona as an eligible entity providing aviation services in a designated Military Reuse Zone (MRZ). As a result, construction-type improvements within the MRZ are eligible for exemption from State Transaction Privilege Taxes (sales taxes).

**3.7.3** This project lies within a designated State of Arizona Military Reuse Zone. The proposed CMAR, with assistance from the Authority, shall apply for any and all applicable benefits and if accepted into the program, reduce the final contract amount by an amount equal to the benefits received, such that the Authority receives the benefit intended under the law.

### 3.8 PERMITS AND FEES.

The CMAR shall secure and pay, as applicable, for the building permit and plan check fee, and the CMAR shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work.

### 3.9 ALLOWANCES.

**3.9.1 Allowances Included in GMP.** The CMAR shall include in the GMP all allowances stated in the Contract, if any. Such persons or entities shall supply for such amounts and items covered by allowances as the Owner may direct.

**3.9.2 Costs Included in Allowances.** Unless otherwise provided in the Contract:

- .1 Allowances shall cover the cost to the CMAR of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, rebates, credits or other such reductions in cost made available to CMAR;
- .2 CMAR's costs for unloading and handling at the Site, labor, installation costs, bonds, permits, insurance, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances except when installation is specified as part of the allowance in the General Requirements (Division I of the Specifications); and

- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.9.2.1 and (2) changes in CMAR's costs under Section 3.9.2.2.

**3.9.3 Selection of Products.** CMAR shall, at the time of submittal of the CMAR Construction Schedule, advise the Owner of the date when the final selection and purchase of each product or system described by an allowance must be completed to avoid delaying the work.

### **3.10 SUPERINTENDENT.**

**3.10.1 On Site.** The CMAR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the work. The superintendent shall represent the CMAR, and communications given to the superintendent shall be as binding as if given to the CMAR. The CMAR shall confirm important communications in writing. If prime CMAR is working on more than one project at Phoenix-Mesa Gateway Airport a separate superintendent will be provided for this project.

**3.10.2 Satisfactory to Owner and Architect.** The CMAR's superintendent and staff must be satisfactory to the Owner. The CMAR, within ten (10) days of the Contract award, shall submit to the Architect and Owner the names and resumes of the superintendent and staff it proposes to use for the work. The superintendent and key members of the CMAR's staff shall not change without the prior consent of the Owner. However, the CMAR agrees to change any superintendent or key member of the CMAR's staff at the request of the Owner if in the sole opinion of the Owner such person's performance is unsatisfactory.

### **3.11 CMAR'S SCHEDULES.**

**3.11.1 CMAR Construction Schedule.** The CMAR, within ten (10) calendar days after being awarded the Contract, shall meet with the Architect and prepare and submit for the Owner's and Architect's information and review a construction schedule for the work ("CMAR Construction Schedule"). Such schedule (1) shall not exceed time limits current under the Contract, (2) shall be updated and submitted monthly or more often as directed by the Owner or Architect, (3) shall comply with the work Milestone Dates, and (4) shall provide for expeditious and practicable execution of the work.

**3.11.2 Updated Schedules.** The updated CMAR Construction Schedules shall not exceed time limits current under the Contract and shall be in accordance with, and fully coordinated with all information previously supplied to the CMAR, including the work Milestone Dates. The CMAR shall submit an updated Schedule with each monthly pay application.

The CMAR, prior to the start of the weekly progress meetings shall, if required, develop a three (3) week look-ahead schedule. The CMAR will discuss this schedule during the progress meetings. The CMAR's three (3) week look-ahead schedule shall not be changed without the approval of the Architect. Permitted revisions to the schedule will be based on the availability of inspection staff, materials testing staff and the amount of lead time provided for the requested schedule change. Should the CMAR request a change in the three (3) week look-ahead schedule to request to work night shifts, weekends or Holidays; a minimum of a 72-hour notice will be required. The Architect/Owner may not approve the requested change if the CMAR does not provide the 72-hour notice. Should the Architect/Owner approve the requested change, the CMAR shall immediately furnish a revised three (3) week look-ahead schedule to the Architect.

**3.11.3 Critical Path Method.** The CMAR Construction Schedule shall be a critical path method (CPM) precedence diagram network or other mutually agreed upon form of schedule with supporting printouts and a computer disk prepared on software as may be acceptable to the Owner and Architect.

**3.11.4 Scheduling Cooperation.** The CMAR shall cooperate with the Architect in scheduling and performing the CMAR's work to avoid conflict, delay in or interference with the work of other contractors or the construction or operations of the Owner's own forces.

**3.11.5 Submittal Schedule.** The CMAR, within ten (10) calendar days after being awarded the Contract, shall prepare and submit for the Owner's information and the Architect's review a schedule for submittal of Shop Drawings, Product Data, Samples, mockups, models and other submittals ("Submittal Schedule") which is coordinated with the CMAR Construction Schedule and the work Milestone Dates, if any, and which allows the Architect reasonable time for review of such submittals. The CMAR shall issue to the Architect a monthly updated Submittal Schedule that identifies both submitted and to be submitted items and the approval status of such items.

**3.11.6 Conform to Most Recent Schedule.** The CMAR shall conform to the most recent schedules.

**3.11.7 Material Status Report.** The CMAR, within ten (10) calendar days after the Notice of Award shall prepare and submit a report for materials ("Material Status Report") on a form approved by the Architect. This report shall be updated and submitted on a monthly basis or more often as directed by the Architect. Delivery dates provided on the Material Status Report shall conform to the CMAR's Submittal Schedule, the CMAR Construction Schedule and the work Milestone Dates, if any.

**3.11.8 Manpower Schedule.** The CMAR, within ten (10) calendar days of the Notice of Award shall prepare and submit a projected schedule for manpower ("Manpower Schedule") for the duration of the work. This schedule shall be updated and submitted on a monthly basis or more often as directed by the Architect. The Manpower Schedule shall be broken down by craft or trade. This schedule shall conform to the CMAR Construction Schedule and the work Milestone Dates, if any.

**3.11.9 Compliance with Schedules.** The CMAR shall be responsible for all costs resulting from its lack of diligence or failure to provide needed labor or materials to meet the requirements of the work Milestone Dates, if any, or the CMAR Construction Schedule. Owner may withhold payments to CMAR if requested to do so by CMAR's Surety, or otherwise if necessary to protect the Owner from delay or expense occasioned by the CMAR's failure to perform under the Contract.

### **3.12 DOCUMENTS AND SAMPLES AT THE SITE.**

**3.12.1 CMAR to Maintain.** The CMAR shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Change Orders, Shop Drawings, Product Data, Samples, current As-Built Drawings, and addenda or modifications in good order and marked currently to record changes and selections made during the work. These shall be available to the Owner and Architect and shall be delivered to the Architect for submittal to the Owner before Final Payment is due.

**3.12.2 Record Drawings.** The CMAR shall keep one (1) copy of all specifications, plans, addenda, modifications, working drawings, and shop drawings at the site and in good order, and the CMAR shall annotate these to show all changes made during construction as the changes occur. When the Project is complete but before the final application for payment is submitted, the annotated set of plans showing the

as-built work and any annotated working and shop drawings shall be delivered to the Architect for the Owner's record.

**3.12.3 Preparation of Manuals.** Before final payment is due, the CMAR shall furnish to the Architect five (5) sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract and any additional data requested under the Specifications for each division of the work. The manuals shall have a table of contents, indexes and be bound in a 3-ring notebook.

### **3.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

**3.13.1 Not Part of Contract.** Shop Drawings, Product Data, Samples and similar submittals are not part of the Contract. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the CMAR proposes to conform to the information given and the design concept expressed in the Contract.

**3.13.2 Prompt Submittal.** The CMAR shall submit, in accordance with its Submittal Schedule, Shop Drawings, Product Data, Samples and similar submittals required by the Contract with such promptness as to cause no delay in the CMAR's own work or in that of any other CMAR. The CMAR shall cooperate with the Architect in the coordination of the CMAR's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other contractors. Submittals made by the CMAR that are not required by the Contract may be returned without action.

**3.13.3 Review Required.** The CMAR shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the Architect has reviewed the submittal. Such work shall be performed in accordance with reviewed submittals.

**3.13.4 Representations Made by Submittals.** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that the CMAR has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract.

**3.13.5 Effect of Review.** The CMAR shall not be relieved of responsibility for deviations from requirements of the Contract by the Architect's review of Shop Drawings, Product Data, Samples or similar submittals unless the CMAR has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's review thereof.

**3.13.6 Revisions to Submittals.** The CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

**3.13.7 Informational Submittals.** Informational submittals upon which the Architect is not expected to take responsive action shall be so identified in the submittals.

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

**3.13.9 Cost for Re-submittals.** The Owner shall have the right to require the CMAR to pay the additional costs of the Architect resulting from the review by the Architect of any Shop Drawings, Product Data, Samples and similar submittals which have been submitted three (3) or more times.

### **3.14 USE OF SITE.**

**3.14.1 Limits on Use.** The CMAR shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Owner and shall not unreasonably encumber the Site with materials or equipment. Only materials and equipment that are to be used directly in the work shall be brought to the Site. After equipment is no longer required for the work, it shall be promptly removed from the Site.

**3.14.2 Owner Approval.** The CMAR shall coordinate the CMAR's operations with, and secure the approval of, the Owner before using any portion of the Site.

**3.14.3 Display of Signs.** The CMAR shall not display on or about the Site any sign, trademark or other advertisement without the consent of the Owner.

**3.14.4 Equipment Location.** The CMAR's field offices, shanties, materials, storage rooms, etc., if any, will be placed in locations designated by the Architect or Owner. When it becomes necessary, due to the progress of the Project, for the CMAR to relocate the CMAR's field operations, such relocation will be accomplished in an expeditious manner with no increase in the Contract Time or GMP.

### **3.15 CUTTING AND PATCHING.**

**3.15.1 CMAR Responsible.** The CMAR shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly with other work.

**3.15.2 Consent Required.** The CMAR shall not damage or endanger work performed by the Owner or other contractors by cutting, patching, excavating or otherwise altering such construction. The CMAR shall not cut or otherwise alter work performed by the Owner or other contractors except with written consent of the Owner and such other contractors. The CMAR shall not unreasonably withhold from the other contractors or the Owner the CMAR's consent to cutting or otherwise altering the work.

### **3.16 CLEANING UP.**

**3.16.1 Daily Clean Up.** The CMAR shall, on a daily basis, clean up after its operation by removing rubbish, including old and surplus materials. The CMAR shall use its best efforts to prevent dust. All waste materials, rubbish and debris resulting from CMAR's work shall be removed regularly from the Site and disposed in accordance with federal, state, and local laws.

**3.16.2 Final Clean Up.** At the completion of the work, the CMAR shall remove all its waste materials and rubbish from and about the Site as well as all its tools, construction equipment, machinery and surplus materials. The CMAR shall professionally wash and clean all surfaces and leave the work neat and clean, ready for occupancy by the Owner, unless higher cleaning standards are required elsewhere in the Contract. The CMAR shall be responsible for the overall cleanliness and neatness of the work.

**3.16.3 Failure to Clean Up.** If the CMAR fails to perform regular daily cleanup or to cleanup at the completion of the work as specified, the Owner may do so or cause such work to be performed, with the cost paid for by the CMAR. The Owner shall have the right to retain such costs from payments due CMAR.

**3.16.4 Clean Up Disputes.** If a dispute arises between the CMAR and other contractors as to their responsibility for cleaning up as required by this Section 3.16, or elsewhere in the Contract, the Owner may clean up and equitably charge the cost thereof to the several contractors. The Owner shall have the right to retain such costs from payments due CMAR.

### **3.17 ACCESS TO WORK.**

The CMAR shall provide the Owner and Architect access to the work in preparation and progress wherever located. The CMAR shall provide facilities for such access so that the Architect may perform its functions under the Contract.

### **3.18 ROYALTIES AND PATENTS.**

**3.18.1 CMAR Responsibility.** The CMAR shall pay all royalties and license fees applicable to the CMAR's work. The CMAR shall indemnify, defend and hold harmless the indemnified parties from any and all suits, demands or claims for infringement of any patent rights unless a particular design, process or product is specified in the Contract. If such specification is made and the CMAR has reason to believe it is an infringement of a patent, the CMAR shall be responsible for any loss arising therefrom unless the CMAR promptly notifies the Architect before performing any portion of the work involving the patented item.

**3.18.2 Effect of Review by Architect.** The review by the Architect of any method of construction, invention, appliance, process, article, device or material of any kind shall not constitute an approval thereof for use by the CMAR in violation of any patent or other rights of any third party.

### **3.19 INDEMNIFICATION.**

**3.19.1 Indemnification for Claims Arising From Work.** To the fullest extent permitted by law, the CMAR shall fully protect, indemnify, defend and hold harmless the indemnified parties from and against any and all liabilities, claims or demands, arising out of or resulting from, either directly or indirectly, the performance of the work or the conditions of the Site, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the work itself) including the loss of use resulting therefrom, and (2) is caused by any act, neglect, default or omission of the CMAR or Subcontractor or anyone for whose acts either of them may be liable. But in no event, shall CMAR be required to indemnify Owner for Owner's negligence. The CMAR's indemnity obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Section 3.19.1. The CMAR at its own expense and risk shall defend all legal proceedings that may be brought against the indemnified parties on any such liability, claim or demand, and satisfy any resulting judgment that may be rendered against any of them.

**3.19.2 Effect of Workers' Compensation Law on Indemnification.** In any and all claims against the indemnified parties by any employee of the CMAR or Subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 3.19 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CMAR or any



subcontract under Workers' or Workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4      ADMINISTRATION AND RESOLUTION OF DISPUTES**

### **4.1      ADMINISTRATION OF THE CONTRACT.**

**4.1.1 Owner's Representatives.** The Architect may provide administration of the Contract, and may be the Owner's representative (1) during construction, (2) until Final Payment is made, and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2.

**4.1.2 Coordination of Contractors.** The Owner will provide for coordination of the activities of other contractors and of the Owner's own forces with the work of the CMAR, who shall cooperate with them. The CMAR shall participate with other contractors and the Owner in reviewing their construction schedules when directed to do so. The CMAR shall make any revisions to the CMAR Construction Schedule deemed necessary by the Architect or Owner.

**4.1.3 Coordination with Work Milestone Dates.** The CMAR shall schedule and coordinate its activities in accordance with the work Milestone Dates, if any. The Owner will schedule and coordinate all Contractors with respect to their use of the Site.

**4.1.4 Architect's Observation of the Work.** The Architect may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will comply with the Contract. The Owner may assign an inspector to observe the work and report to the Architect on its progress. Whenever it appears that material furnished or work performed by the CMAR fails to fulfill Contract Document requirements, the inspectors may, but shall not be required to, report their observations to the Architect. The inspector may direct the attention of the CMAR to such work defects or deficiencies, but nothing the inspector observes, says, or does shall relieve the CMAR from the obligation to perform the work strictly in accordance with the Contract Documents. The inspector shall have the authority to reject defective work. The Owner shall have the authority to suspend the work until an issue can be referred to and decided by the Owner. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents. Inspectors shall in no case act as foremen or perform other duties for the CMAR or interfere with prosecution of the work.

**4.1.5 Control of Work.** The Owner and Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the CMAR's responsibility and neither will be responsible for the CMAR's failure to carry out the work in accordance with the Contract. Neither the Owner nor the Architect will have control over or charge of or be responsible for acts or omissions of the CMAR or Subcontractors. Inspections by the Architect or designee shall not constitute control of individual workmen or the work. Direct control of workmen shall be solely the responsibility of the CMAR. Refer to General Provision Specification Section 50 for additional provisions related to Control of Work.

**4.1.6 Communication with Owner and Architect.** Except when direct communications have been specifically not authorized in the Contract, the CMAR shall communicate with the Owner through the Architect. Communications by and with Subcontractors shall be through the CMAR. Communications by and with other contractors shall be through the Owner.

**4.1.7 Authority to Reject Work.** The Architect/Owner and the Inspectors shall have authority to reject work that does not comply with the Contract and to require additional testing and inspection.

**4.1.8 Architect's Review of Submittals.** The Architect will receive from the CMAR and review shop drawings and submittals as listed in Special Provision Specifications.

**4.1.9 Limitation on Architect's Review of Submittals.** The Architect will review or take other appropriate action on the CMAR's submittals such as shop drawings, working drawings, supplemental drawings, product data and samples, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract. The Architect's action will be taken within two (2) weeks of the date of submittal to the Architect. Review is for general compliance with the intent of the Contract Documents only. The CMAR is responsible for dimensions, quantities, performance, details, coordination with other trades, safety and other requirements of the Contract Documents. Review does not authorize changes to the contract requirements unless specifically stated in a separate letter of change order. The Architect's review of the CMAR's submittals shall not relieve the CMAR of the obligations under the Contract. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.1.10 Inspections by the Architect.** The Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, and will receive written warranties and related documents required by the Contract and assembled by the CMAR.

**4.1.11 Aesthetic Decisions.** The Owner's decisions on matters relating to aesthetic effect will be final.

**4.1.12 Architect Representation at Site.** The Architect will be represented at the Site by appropriate construction supervisory staff for the observation of the CMAR's work. The Owner will establish procedures for coordination among the Owner, Architect and other contractors as appropriate for all aspects of the project.

**4.1.13 Contractors Required to Attend Meetings.** The Architect or Owner will call for weekly meetings of the CMAR and Subcontractors, as Architect or Owner deems necessary. Such meetings shall be held at the Site on regular working days during regular working hours, unless otherwise directed. Attendance shall be mandatory for all parties notified to attend, and the CMAR and Subcontractors so notified are required to have a responsible member of their organizations with full decision making authority in attendance.

**4.1.14 Acts or Omissions by Architect.** In no event shall any act or omission on the part of the Architect relieve the CMAR from its obligation to perform the work in full compliance with the Contract.

## **4.2 CLAIMS AND DISPUTES.**

**4.2.1 Time Limits on Claims.** Claims by the CMAR must be made within the number of days specified in Sections 4.2.3, 4.2.4, 4.2.5 or 4.2.6 before the occurrence of the event giving rise to such claim. Claims shall be made by written notice. An additional claim made after the initial Claim has been implemented, by Change Order, shall not be considered.

**4.2.2 Continuing Contract Performance.** Pending final resolution of a claim, the CMAR shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract other than amounts in dispute.

**4.2.3 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract, (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily

found to exist and generally recognized as inherent at the Site, and (3) could not have been discovered by a thorough inspection and investigation of the Site by the CMAR, the CMAR shall give written notice within 24-hours of observing such conditions to the Architect and Owner. The Architect will promptly investigate these conditions and, if they differ materially and cause an increase or decrease in the CMAR's cost of, or time required for, performance of any part of the work, may recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Owner, determines that the conditions at the Site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Architect shall so notify the CMAR in writing, stating the reasons. Claims by the CMAR in opposition to such determination shall be made within three (3) calendar days after the Architect has given notice of the decision. Failure to give notice in strict compliance with this time frame shall constitute a waiver of such claim.

#### **4.2.4 Claims for Additional Cost.**

**4.2.4.1 Required Notice Prior to Execution of Work.** If the CMAR wishes to make Claim for an increase in the Contract Sum, written notice as provided in Section 4.2.4.2 shall be given 24-hours before proceeding to execute the work. If the CMAR believes additional cost is involved for reasons including but not limited to (1) a changed condition unknown to all parties at the time of bid, (2) an order by the Owner to stop the work where the CMAR was not at fault, (3) a written order for a major change in the work issued by the Architect, (4) failure of payment by the Owner, or (5) other reasonable grounds, the claim shall be filed in accordance with Section 4.2.4.2.

**4.2.4.2 Claims for Adjustment and Disputes.** If the CMAR wishes to make a claim for an increase in the Contract Sum, the CMAR shall give the Architect written notice thereof within 24-hours before proceeding with the work for the event giving rise to such claim, in the exercise of due diligence, for the condition giving rise to such Claim.

**4.2.4.3 Waiver of Claim for Additional Cost.** Failure to give notice of a claim for an increase in the Contract Sum, in strict compliance with the requirements of this Section 4.2.4 shall constitute a waiver of such Claim.

#### **4.2.4.4 Not Used**

#### **4.2.4.5 Not Used**

#### **4.2.5 Claims for Additional Time.**

**4.2.5.1 Estimate of Cost and Delay.** If the CMAR wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 4.2.5.4 shall be given. The CMAR's claim shall include an estimate of cost and of probable effect of delay on progress of the work. In the case of a continuing delay only one claim is necessary.

**4.2.5.2 Adverse Weather.** The CMAR is required, in preparing the Project Schedule, to take into account all relevant weather conditions, including normal rainfall and distribution. No additional compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. No time extension will be granted in the Project Schedule unless actual monthly inclement weather exceeds the monthly average for that identified in **Table 1** for the same month. The City of Mesa average monthly precipitation data has been provided as shown in **Table 1** below, based on data published by the Western Regional Climate Center (Jan 2016). In addition, the excessive rainfall must have actually impacted Work Activities on the Critical Path and cause delay beyond any remaining Float at the time of the rain-caused delay. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on the CMAR. All other

provisions in the Contract Documents relating to claims, including without limitation notice requirements, apply to any claim by the CMAR for a rain delay.

The CMAR shall request an extension of time in writing within twenty-four (24) hours after the event that caused the delay.

**TABLE 1 – City of Mesa Average Monthly Precipitation Data.**

Month	Average Monthly Precipitation
January	0.93-inches
February	0.89-inches
March	0.91-inches
April	0.36-inches
May	0.13-inches
June	0.09-inches
July	0.92-inches
August	1.13-inches
September	0.80-inches
October	0.56-inches
November	0.66-inches
December	0.98-inches

**4.2.5.3 Critical Path.** No extension of time shall be granted to the CMAR for a delay caused by the Owner, Architect, any of the other contractors, or other causes beyond the CMAR’s control, unless the delay affects the critical path of the Project and then only to the extent that the delay affects the critical path. No extension of time shall be granted to the CMAR to the extent that, notwithstanding the existence of any such circumstance beyond the CMAR’s control, delay would have resulted in any event due to a concurrent unexcused delay by the CMAR.

**4.2.5.4 Notice of Claim for Additional Time.** If the CMAR contends that it is entitled to an extension of time for completion of any portion or portions of the work, the CMAR shall, within 24-hours of the occurrence of the cause of the delay, notify the Architect in writing of its Claim, setting forth (a) the cause of the delay, (b) a description of the portion or portions of work affected by the delay, (c) the specific number of days of delay for which an extension of time is requested, and (d) all details pertaining thereto. Within three (3) calendar days after the expiration of any such delay, if such delay continues after the filing of the Claim pursuant to the foregoing sentence, the CMAR shall deliver to the Architect a subsequent written application for the specific number of days of extension of time requested.

**4.2.5.5 Request for Changes in Time Resulting from Change in Work.** For changes in the work which significantly affect the time and progress of the work, any time extension shall be requested no later than when the change in the work is requested.

**4.2.5.6 Waiver of Claim for Additional Time.** Failure to give notice of a Claim for extension of time in strict compliance with the requirements of this Section 4.2.5 shall constitute a waiver of such Claim.

**4.2.6 Injury or Damage to Person or Property.** If the CMAR suffers injury or damage to person or property because of an act or omission of the Owner, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding 24-hours after first observance. The

notice shall provide sufficient detail to enable the Owner to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Section 4.2.4 or 4.2.5.

### **4.3 ALTERNATIVE DISPUTE RESOLUTION.**

The Owner and CMAR may adjudicate any dispute between them arising out of or relating to this Contract through alternative dispute resolution if they mutually agree. The Owner and CMAR shall include a similar alternative dispute resolution provision in all agreements with all other contractors, subcontractors, suppliers, and consultants retained for the Project, and they shall require these contractors, subcontractors, and suppliers to include similar alternative dispute resolution provisions in all contracts relating to the Project.

## **ARTICLE 5      SUBCONTRACTORS**

### **5.1      CONTRACTUAL RELATIONSHIP.**

Nothing contained in the Contract shall create any contractual relationship between the Owner or Architect and any Subcontractor.

### **5.2      AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.**

**5.2.1 Division of Work.** The CMAR shall submit a Subcontractor List with his bid. The CMAR shall designate and distinguish in writing with his Bid those portions of the work to be performed by Subcontractors and the CMAR's own forces.

**5.2.2 Proposed Subcontractors.** The CMAR shall furnish in writing to the Architect for review by the Owner and Architect the names of persons or entities (including those who are to furnish materials or equipment) proposed for each principal portion of the work with his Bid. The proposed Subcontractors shall be established, reputable firms of recognized standing with a record of successful and satisfactory past performance with the type of work and/or items proposed to be provided or furnished by them. The CMAR shall with this information provide an experience statement or other requested information providing evidence of the Subcontractors' qualifications for the work and experience with similar projects. The Owner and Architect shall have the right to reject any proposed Subcontractor for whom they have a reasonable objection. The Architect will promptly reply to the CMAR in writing stating whether or not the Owner or Architect, after due investigation, has reasonable objection to any such proposed person or entity.

**5.2.3 Opportunity to Review List of Proposed Subcontractors.** No subcontracts shall be executed until the Owner and Architect have had a reasonable opportunity to review the list of Subcontractors. The CMAR shall not contract with a proposed person or entity to which the Owner or Architect has made reasonable and timely objection.

**5.2.4 Reasonable Objection to Proposed Subcontractors.** If the Owner has reasonable objection to a person or entity proposed by the CMAR, the CMAR shall propose another to whom the Owner or Architect has no reasonable objection. No increase in the GMP or Contract Time shall be allowed for such change.

**5.2.5 Reasonable Objection to Removing Approved Subcontractors.** The CMAR shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

**5.2.6 CMAR Responsibility Not Diminished.** The right of the Owner to reject proposed Subcontractors shall not diminish the CMAR's responsibility for the performance of the CMAR's Subcontractors. The CMAR shall continue to be fully responsible to the Owner for the proper, complete and timely execution of the work, even though a portion of such work has been subcontracted to a Subcontractor acceptable to the Owner.

### **5.3      SUBCONTRACTUAL RELATIONS.**

**5.3.1 Subcontractors Subject to Contract.** By an appropriate written Agreement, the CMAR shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the CMAR by the terms of the Contract, and to assume toward the CMAR all the obligations and responsibilities which the CMAR assumes toward the Owner and Architect, except with respect to the ADR provisions of this Contract. The CMAR shall require its Subcontractors to enter into similar agreements with their Subcontractors, except with respect to the ADR provisions of this Contract. The CMAR shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of this Contract to which

the Subcontractor will be bound, except with respect to the ADR provisions of this Contract. Each Subcontractor shall similarly make copies of this Contract available to their Subcontractors.

**5.3.2 Terms to be Included in Subcontracts.** All work performed for the CMAR by a Subcontractor shall be pursuant to a written subcontractor agreement between the CMAR and the Subcontractor. The CMAR will insure that each such subcontract contains provisions requiring:

- .1 that the work be performed and guaranteed in accordance with the requirements of this Contract.
- .2 submission to the CMAR of Applications for Payment under each subcontract, and reasonable time to enable the CMAR to apply for payment in accordance with Article 9;
- .3 that the Subcontractor pay sub-subcontractors in accordance with A.R.S. § 32-1129.02 and 34-221(E);
- .4 that the Subcontractor purchase and maintain insurance and comply with all insurance provisions as required by Article 11; and
- .5 that the Subcontractor consent to an assignment of the subcontract from the CMAR to the Owner in the event of termination of the CMAR by the Owner.
- .6 all Federal Assurances as listed in these Specifications.

#### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACT.**

The CMAR hereby assigns a portion of the work to the Owner any subcontracts held by the CMAR provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.1 and only for those subcontracts which the Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the Surety, if any, obligated under the bond required by the Contract.



**ARTICLE 6      CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS****6.1      OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS.**

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts involving different Engineers. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the Site.

**6.2      MUTUAL RESPONSIBILITY.**

**6.2.1 Coordination with Owner's Forces.** The CMAR shall afford the Owner's own forces and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the CMAR's construction and operations with theirs as required by the Contract.

**6.2.2 Defects in Other Work.** If part of the CMAR's work depends upon construction or operations by the Owner's own forces or other contractors, the CMAR shall, prior to proceeding with that portion of the work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. Failure of the CMAR to so report shall constitute an acknowledgment that the Owner's own forces or other contractors' completed or partially completed construction is fit and proper to receive the CMAR's work, except as to defects not then reasonably discoverable.

**6.2.3 Damage to Other Work.** The CMAR shall promptly remedy damage caused by the CMAR to the completed or partially completed Project or to the property of the Owner or other contractors.

## **ARTICLE 7      CHANGES IN THE WORK**

### **7.1      CHANGE ORDERS.**

**7.1.1 Defined.** A Change Order is a written order to the CMAR signed by the Owner authorizing a change in the (1) Work, (2) Contract Sum or (3) Contract Time. Only a Change Order may change the Contract Sum or Contract Time. The CMAR or its Subcontractors shall not perform any work for which the CMAR intends to seek additional money or an extension of time unless the CMAR obtains a written Change Order or written approval by the Owner prior to performing the work. A Change Order signed by the CMAR indicates the CMAR's agreement therewith, including without limitation, any adjustment in the Contract Sum or Contract Time. A Change Order signed by the CMAR without any indication of change in the GMP or Contract Time indicates the CMAR's agreement that there will be no change in the Contract Sum or Contract Time (collectively "Change Order").

**7.1.2 Contract Sum.** Adjustments to the Contract Sum shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract or subsequently agreed upon;
- .3 actual cost of the change, as determined by payroll records and paid receipts, plus allowances for the CMAR's overhead and profit as provided for in Section 7.1.4 subject to a predetermined maximum amount, less applicable trade discounts, rebates, credits or other such reductions in cost made available to CMAR; and
- .4 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

**7.1.3 Itemized Costs.** For the purpose of preparing Change Orders, the CMAR shall submit to the Architect and Owner a complete itemization of all costs required for the change in such form and detail requested by the Architect/Owner.

**7.1.4 Overhead and Profit.** The maximum that will be allowed for combined overhead and profit, expressed as a percentage of the actual basic cost of the change, shall be as set forth in General Provisions Section 90.05. However, the percentage for overhead and profit allowed by the Owner may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the CMAR merely processing a substantial Change Order to a Subcontractor).

**7.1.5 Limitations on Costs.** Costs for changes, to which overhead and profit are to be applied, shall be limited to the following:

- .1 actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed, less applicable trade discounts, rebates credits or other such reductions in cost made available to CMAR;

- .3 actual rental costs of machinery and equipment per ADOT schedule of equipment rates.
- .4 actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

**7.1.6 Costs of Material.** Material costs shall be at the actual cost to the CMAR or Subcontractor. Upon request, the CMAR, or Subcontractor, shall submit evidence to substantiate the costs. Materials shall be quoted at trade discount price, with quantity discounts also applied where the quantities warrant. Cash or prompt payment discounts need not be credited. In any proposal with material credits, the credit shall be based on the actual contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning material that has been delivered. No cancellation or restocking charge will be allowed when material has not been shipped.

**7.1.7 Actual Costs.** Except for changes based on unit prices included in the Contract, cost changes shall be computed by determining the actual cost enumerated in Section 7.1.5 to which the combined overhead and profit may be added, and then adding the tax on materials.

**7.1.8 Unit Prices.** Unit prices proposed on the bid form and included in the Contract are not subject to further overhead and profit adjustments. The Contract Sum will be adjusted by the direct extension of the number of units and the unit prices.

**7.1.9 Impact Costs.** No claim for impact costs resulting from the performance of a Change Order will be permitted against the Owner, the Architect, or any other party in privity of contract with the Owner with respect to the Project after the time the Change Order is signed by the CMAR.

**7.1.10 Prompt Response to Proposed Changes.** The CMAR shall promptly respond to requests for proposals for changes initiated by the Owner or the Architect, and in any event shall provide a written itemized proposal in response to any such request within five (5) calendar days after such request is made to the CMAR.

**7.1.11 Final Settlement.** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum, the CMAR shall include the work covered by such Change Orders in Applications for Payment as if such work were originally part of the Contract. Agreement on any Change Order releases the Owner, Architect, and any other party in privity of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in connection with, or in any way association with, such change.

## **7.2 CHANGE DIRECTIVE.**

**7.2.1 Defined.** A Change Directive is a written order prepared by the Architect and signed by the Owner and Architect directing the CMAR to proceed with a change in the work when the Owner and CMAR do not agree on the extent of the work, Contract Sum, or Contract Time related to the requested change (“Change Directive”). The Change Directive shall include a proposed basis for adjustment in the Contract Sum or Time, if any adjustment is to be made.

**7.2.2 Contract Sum.** If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.1.5.

**7.2.3 CMAR's Duty to Proceed with the Change in the Work.** Upon receipt of a Change Directive, the CMAR shall promptly proceed with the change in the work involved and advise the Architect of the CMAR's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**7.2.4 CMAR's Signature on Change Directive.** A Change Directive signed by the CMAR indicates the agreement of the CMAR therewith, including adjustment in Contract Sum and Contract Time and the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.2.5 Change Order Required for Payment.** Pending final determination of cost by the Owner, amounts not in dispute in a Change Directive may be included in Applications for Payment, provided amounts not in dispute have been previously approved in a Change Order. The amount of credit to be allowed by the CMAR to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as determined by Sections 7.1.4 and 7.1.5 and confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

### **7.3 MINOR CHANGES IN THE WORK.**

The Architect will have authority to order minor changes in the work not involving adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by written order issued through the Architect, and shall be binding on the CMAR. The CMAR shall carry out such written orders promptly.

**ARTICLE 8      TIME****8.1      PROGRESS AND COMPLETION.**

**8.1.1 Consent to Contract Time.** The CMAR acknowledges that the Contract Time is a reasonable period for performing the work, and that it is capable of properly completing the work within the Contract Time.

**8.1.2 Effective Date of Insurance.** Except by agreement or instruction of the Owner in writing, the CMAR shall not knowingly prematurely commence operations on the Site or elsewhere before the effective date of insurance provided by CMAR under Section 11.2 and bonds to be furnished by the CMAR under Section 11.3.1.

**8.1.3 Compliance with Contract Time.** The CMAR shall carry the work forward expeditiously with adequate forces to maintain progress in accordance with the CMAR Construction Schedule and the work Milestone Dates, if any, and to complete the work within the Contract Time.

**8.1.4 Notice Required Before Commencing Work.** The CMAR shall give notice in writing at least forty-eight (48) hours before commencement of the work, to all persons, public utility companies, owners of property having structures or improvements in proximity to the Site, superintendents, inspectors, or those otherwise in charge of property, streets, water lines, gas lines, sewer lines, telephone cables, electric cables, railroads, or others who may be affected by CMAR's operations, in order that they may remove any obstruction for which they are responsible, and have representation on the Site to see that their property is properly protected. Such notice does not relieve the CMAR of responsibility for any damages, claims, or defense of all actions against the Owner or Architect resulting from performance of the work.

**8.1.5 Maintenance of Utilities.** The CMAR shall (1) protect utilities encountered whether indicated on Drawings or not; (2) exercise care in excavation around utilities; (3) restore any damaged items to the same condition (or better) as existed prior to starting the work; and (4) maintain utilities or other services indicated to be abandoned in service until new services are provided, tested, and ready for use.

**8.2      DELAYS AND EXTENSIONS OF TIME.**

**8.2.1 Notice of Delays.** The CMAR shall provide prompt written notice to the Architect of the occurrence of any delay, and in no event shall such notice be given later than (24) hours after commencement of the delay. The CMAR agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or could not have been anticipated by the CMAR, and (2) could not have been limited or avoided by the CMAR's timely notice to its suppliers, Subcontractors, the Owner, or Architect of the delay.

**8.2.2 Claims for Additional Time.** Claims relating to time shall be made in accordance with Section 4.2.5.

**8.2.3 Recovery of Damages Not Precluded.** This Section 8.2 does not preclude recovery of damages for delay by either party.

**ARTICLE 9      PAYMENTS AND COMPLETION****9.1      SCHEDULE OF VALUES.**

At least thirty (30) calendar days before the first Application for Payment is submitted, or at the Pre-construction conference, whichever is sooner, the CMAR shall submit to the Architect a schedule detailing values allocated to various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require (“Schedule of Values”). The Schedule of Values shall detail labor, materials and transportation costs for each pay item. This schedule, after acceptance by the Architect, shall be used as a basis for reviewing the CMAR’s Applications for Payment.

**9.2      APPLICATIONS FOR PAYMENT.**

**9.2.1 Defined.** On the 25th of each month or the next Business Day if the 25th is a legal holiday or weekend, the CMAR shall submit to the Architect an itemized application requesting payment for work completed in accordance with the Schedule of Values, substantiating the CMAR’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and reflecting retainage (“Application for Payment”).

**9.2.3 Change Order Required for Payment.** Applications for Payment may not include requests for payment on account of changes in the work which have been properly authorized by Change Directives but not yet included in executed Change Orders.

**9.2.4 Disputes with Subcontractors.** Applications for Payment may not include requests for payment of amounts the CMAR does not intend to pay to a Subcontractor because of a dispute or other reason.

**9.2.5 Retainage.** Until the work is fifty (50) percent complete, the Owner will retain ten (10) percent of the amount due the CMAR on account of progress payments. When the contract is fifty (50) percent complete, one-half of the amount retained shall be paid to the CMAR upon the CMAR’s request, provided the CMAR is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be escrow. At the time the work is fifty (50) percent complete and thereafter, five (5) percent of the amount of each progress payment will be retained unless the Architect or Owner determines that the CMAR is not making satisfactory progress or is in default under the Contract. If the Architect or Owner determines that the CMAR is not making satisfactory progress or is in default under the Contract, the Owner may continue or reinstate retainage of up to ten (10) percent for all progress payments made under the Contract subsequent to the determination. (Note that the Owner will accept Deposits in Escrow in accordance with *General Provisions* Section 90-08 PAYMENT OF WITHELD FUNDS in lieu of retention of partial payments).

**9.2.6 Payment for Stored Materials.** Unless otherwise provided in the Contract, payments shall be made on account of materials delivered and suitably stored at the Site for subsequent incorporation in the work. Payment will not be made for materials and equipment suitably stored off the Site. Payment for materials and equipment stored on the Site shall be conditioned upon (1) compliance by the CMAR with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest, (2) property insurance as set forth in Section 11.1.1.4.2, (3) transportation to the Site, and (4) all other requirements as listed in the General Provision Specifications, Section 90-07, Payment for Materials on Hand. The Owner will not consider requests to pay for items that are stored offsite, or off-the-shelf type materials not requiring a long lead time to order.

**9.2.7 Lien Waivers.** The CMAR warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment. The CMAR also warrants that upon submittal of an Application for Payment all work for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the CMAR, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the work. All Applications for Payment shall include lien waivers executed by the CMAR and all Subcontractors providing labor, equipment or materials for the work in the form set forth in A.R.S. § 33-1008. If a Subcontractor, sub-subcontractor, vendor, supplier, manufacturer, or other entity or person supplying labor, equipment, or materials related to the work refuses to furnish a lien waiver for CMAR's Application for Payment, the CMAR shall furnish a bond satisfactory to the Owner against such possible lien prior to payment. Payment shall not be due until CMAR furnishes such bond. The CMAR shall also indemnify defend and hold harmless the indemnified parties against any lien by any Subcontractor, sub-subcontractor, vendor, supplier, manufacturer or other entity or person supplying labor, equipment, or materials related to the work.

**9.2.8 Certified Payroll and Statement of Compliance.** The Architect shall return the monthly progress payment application to the CMAR with no action if all certified payrolls and statement of compliance have not been submitted to the Architect through the ending date of the monthly progress payment application.

### **9.3 RECOMMENDATION FOR PAYMENT.**

**9.3.1 Timing for Recommendation.** The CMAR's Application for Payment shall be deemed approved and certified for payment within ten (10) days from the date of submission to the Owner, unless within ten (10) days from the date of submission, the Owner issues a written finding to the CMAR specifying those items in the Application for Payment that will not be approved for payment. In addition to the amount withheld under Section 9.2.4, the Owner may withhold an additional amount from the progress payment sufficient to pay the expenses that the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. Undisputed portions of progress payments shall be paid monthly after an Application for Payment is submitted to the Owner. The Architect shall recommend payment to the Owner only upon the Architect's determination that the work has progressed to the point indicated in the CMAR's Application for Payment and that to the Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract.

**9.3.2 Recommendation Subject to Later Evaluation.** The recommendation of the Architect and the decision of the Owner to make a payment is subject to later evaluation of the work for conformance with the Contract upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a recommendation for payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed the CMAR's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CMAR's right to payment, or (4) made examination to ascertain how or for what purpose the CMAR has used money previously paid on account of the Contract Sum.

### **9.4 DECISIONS TO WITHHOLD RECOMMENDATION.**

**9.4.1 Criteria for Withholding Recommendation.** The Architect may decide not to recommend payment and may withhold a recommendation in whole or in part, to the extent reasonably necessary to protect the Owner,

if in the Architect's opinion the representations to the Owner required in Section 9.3.1 cannot be made. If the Architect is unable to recommend payment in the amount of the Application for Payment, the Architect will notify the CMAR and Owner as provided in Section 9.3.1. If the CMAR and Architect cannot agree on a revised amount, the Architect will promptly issue a recommendation for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to recommend payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a recommendation previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

- .1 defective work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the CMAR to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another CMAR;
- .6 reasonable evidence that the work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the work in accordance with the Contract;
- .8 failure to submit lien waivers as required by Section 9.2.6;
- .9 unsatisfactory prosecution of the work or failure to comply with the work Milestone Dates or CMAR Construction Schedule;
- .10 failure to supply Shop Drawings or other required submittals;
- .11 erroneous estimates by the CMAR of the value of the work performed; or
- .12 the existence of a breach by the CMAR of any provision in the Contract.

**9.4.2 Recommendation Made Upon Compliance.** When the above reasons for withholding recommendation are removed, recommendation will be made for amounts previously withheld.

## **9.5 PAYMENTS TO SUBCONTRACTORS.**

**Prompt Payment.** The CMAR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime CMAR receives from Owner. The CMAR agrees further to return retainage payments to each subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner.

**9.5.4 No Obligation to Oversee Payments.** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

**9.5.5 Payment Not Acceptance of Work.** A payment recommendation, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of work not in accordance with the Contract.

## **9.6 INTEREST.**

If any payment to the CMAR is delayed after the date due, the Owner shall pay interest at the rate of 1% per month or fraction of a month on such unpaid balance as may be due, provided however, that such 1% charge shall not apply to any disputed portion of an Application for Payment. If any periodic or Final Payment to a



Subcontractor is delayed by more than (7) seven days after receipt of the periodic or Final Payment by the CMAR or Subcontractor, the CMAR or Subcontractor shall pay interest to his Subcontractor or material supplier, beginning on the eighth day, at the rate of 1% per month or a fraction of a month on such unpaid balance as may be due.

## 9.7 FAILURE OF PAYMENT.

If the CMAR, for any reason not the fault of the CMAR, is not paid within fourteen (14) days after the date payment is due, the CMAR may, upon seven (7) additional days notice to the Owner and the Architect, request interest on the amount due. Notwithstanding the preceding, the CMAR shall not stop the work during a dispute that has been submitted to alternative dispute resolution nor shall the CMAR stop the work if the Owner makes payment of any amounts not in dispute within seven (7) days after the Owner receives the CMAR's notice of nonpayment.

## 9.8 SUBSTANTIAL COMPLETION.

**9.8.1 Defined.** Substantial completion is the stage in the progress of the work when all of the work is complete in accordance with the Contract Documents so the Owner can occupy or utilize the project for its intended use. For the project and each construction phase to be substantially complete, the following items must be completed in accordance with the Contract Documents: **all new Work identified in the Contract Documents shall be complete and operational leaving only items identified on the final punchlist outstanding.** The project area must be open and fully operational for airport and aircraft operations use as intended and shown in the plans. The purpose of granting or acknowledging substantial completion is to stop Contract time. Granting of substantial completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply. The date of substantial completion shall be the date the Architect receives, in writing, notification from the CMAR, that the work is substantially complete. If upon inspection the project Architect determines that the project is not substantially complete and/or not ready for inspection, the date of notification from the CMAR will become void. In the event that the Architect grants substantial completion, the CMAR shall have thirty (30) calendar days thereafter to complete punch list work, unless the Architect grants additional time in writing. In no case shall a CMAR be granted more than thirty (30) calendar days to complete punch list work, unless there are extenuating circumstances such as a labor strike or circumstance beyond the CMAR's control that would necessitate a further time extension.

In the event the CMAR fails to complete the punch list work within thirty (30) calendar days following the Contract completion date, or in the case of specialized situations within the additional time allotted by the Architect, the CMAR may be declared in default, and the Architect may order the work completed by others. In the event of default, as described herein, the Architect shall withhold from the CMAR's final payment, an amount equal to at least twice the estimated cost of the remaining work. In addition, the Architect shall withhold the retention or securities deducted from Contract progress payments until all punch list work has been satisfactorily completed, whereupon twice the amount of the actual cost of completing the work shall be deducted from the CMAR's final payment and the remaining funds, if any, including the Contract retention, shall be released in accordance with the conditions set forth in Contract retention. The authority to determine whether the CMAR has achieved Substantial Completion is vested in the first instance with the Architect in consultation with the Owner, and ultimately in the Owner, whose decision shall be final and binding.

**9.8.2 Certificate of Substantial Completion.** When the CMAR considers that all of the work that the Owner agrees to accept as substantially complete, the CMAR shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The CMAR shall, within 30 calendar days,

complete and correct all items on the list, unless the Owner in writing grants a longer time. Failure to include an item on such list does not alter the responsibility of the CMAR to complete all work in accordance with the Contract. Upon receipt of the list, the Architect will make an inspection to determine whether the work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract, the CMAR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The CMAR shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the work or designated portion thereof is substantially complete, the Architect will prepare a certificate which shall (1) establish the date of Substantial Completion, and (2) shall fix the time within which the CMAR shall finish all items on the list accompanying the Certificate ("Certificate of Substantial Completion"). The Certificate of Substantial Completion shall be submitted to the Owner and CMAR for their written acceptance of responsibilities assigned to them in such Certificate.

## **9.9 FINAL COMPLETION AND FINAL PAYMENT.**

**9.9.1 Final Inspection/Request for Punch List.** Following the issuance of a Certificate of Substantial Completion for the work and upon completion of the work, the CMAR shall forward to the Architect a written notice that the work is ready for final inspection and acceptance and shall also forward to the Architect a final Application for Payment. Upon receipt, the Architect will promptly make such inspection. When the Architect, upon consultation with the Owner, finds the work acceptable under the Contract and the Contract fully performed, the Architect will promptly issue a final recommendation stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the work has been completed in accordance with the Contract and that the remaining Contract Sum is due, including all retainage, less authorized deductions.

**9.9.2 Conditions to Final Payment.** Final Payment to the CMAR shall be made within sixty (60) days after compliance Sections 9.9.1 and 9.9.2. Neither Final Payment nor any remaining retainage shall become due until the CMAR submits to the Owner (1) an original affidavit acknowledging that all Subcontractors, material suppliers, payrolls, bills for materials and equipment, and other indebtedness connected with the work have been paid or otherwise satisfied, (2) an original certificate evidencing that insurance required by Section 11.2 is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the CMAR knows of no reason that the insurance will not cover the period required by Section 11.1, (4) the written consent of the Surety to Final Payment, (5) Record Drawings in accordance with Paragraph 3.12.2 and the Special Provision Specifications, certified by the CMAR that the Drawings as submitted are accurate and complete, (6) five (5) sets of manuals, indexed and bound, containing the manufacturer's warranties, instructions for maintenance and operation of each item of equipment and apparatus included in the work, and (7) a full and final release and waiver of liens from the CMAR and all Subcontractors. If a Subcontractor refuses to furnish a release and waiver of liens, the CMAR shall furnish a bond satisfactory to the Owner against such possible liens prior to Final Payment. Final Payment shall not be due until the CMAR furnishes such bond. The CMAR shall also indemnify, defend, and hold harmless the indemnified parties against liens by any Subcontractor (collectively "Final Payment").

**9.9.3 Delay of Final Completion.** If, after Substantial Completion of the work, Final Completion thereof is materially delayed through no fault of the CMAR or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the CMAR and recommendation by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. In such case, the Owner will retain at least two times the value of the incomplete or uncorrected parts of the work, as determined by the Owner in consultation with the Architect.

If the remaining balance for work not fully completed or corrected is less than retainage stipulated in the Contract the written consent of Surety to payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the CMAR to the Architect prior to recommendation of such payment. Such payment shall be made under terms and conditions governing Final Payment.

**9.9.4 Waiver of Claims.** Acceptance of payment by the CMAR or Subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### **9.10 INSPECTION BY ARCHITECT.**

The Architect will make up to two inspections of the work for the purpose of determining Substantial Completion and up to two inspections of the work for the purpose of determining Final Completion. If, after making either of such inspections, the Architect determines that the work is not substantially complete or finally complete (as the case may be), the CMAR shall be responsible for the costs of the Architect incurred in the performance of additional inspections for the purpose of determining Substantial Completion or Final Completion (as the case may be).

**ARTICLE 10**      **PROTECTION OF PERSONS AND PROPERTY****10.1 SAFETY PRECAUTIONS AND PROGRAMS.**

**10.1.1 CMAR's Responsibility.** The CMAR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CMAR shall have a written safety program for the work and shall submit two (2) copies of this safety program to the Architect within fifteen (15) days of the Contract award.

**10.1.2 Remedy for Failure to Maintain Safety.** If the CMAR fails to maintain the safety precautions required by law, the Owner may take action as necessary and charge the CMAR therefore. However, the failure of the Owner to take any such action shall not relieve the CMAR of its obligations set forth in Section 10.1.1. If the CMAR fails to maintain the safety precautions required by law, the CMAR shall, if directed by the Owner, remove all forces from the Project without cost or loss to the Owner until the CMAR complies with such safety precautions.

**10.1.3 Environmental Hazards.** In the event the CMAR encounters on the Site material reasonably believed to contain asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances (as defined or regulated under any federal, state, or local law), the CMAR shall (1) immediately suspend the work in the area affected and report the condition to the Owner and Architect by the fastest available means and follow up in writing; and (2) take reasonable precautions to prevent or contain the movement, spread or disturbance of such materials. The work in the affected area shall not thereafter be resumed except by written consent of the Owner. In no event shall the Owner have any responsibility for any substance or material that is brought to the Site by the CMAR, any Subcontractor, any material-men or supplier or any entity for which any of them is responsible. The CMAR agrees not to use any fill or other materials to be incorporated into the work that are hazardous, toxic or comprised of any items that are hazardous or toxic. CMAR shall indemnify, defend, and hold harmless, the indemnified parties from and against any and all liabilities, claims, or demands (including attorney's fees and costs) arising out of or resulting from the presence, uncovering, release of suspected or confirmed asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances to the extent caused by the negligence of, or failure to comply with the terms and conditions of the Contract by, the CMAR, any Subcontractor, any material-men or supplier, or any entity for whom any of them is responsible.

**10.1.4 Duty to Suspend the Work.** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the Site by the CMAR, the CMAR shall, upon recognizing the condition, immediately suspend the work in the affected area and report the condition to the Owner and Architect in writing.

**10.2 SAFETY OF PERSONS AND PROPERTY.**

**10.2.1 CMAR's Duty to Protect.** The CMAR shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the work and other persons who may be affected thereby;
- .2 the work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the CMAR or the CMAR's Subcontractors;

- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, Taxiways, Runways, Aprons, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

**10.2.2 Compliance with Safety Notices and Laws.** The CMAR shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**10.2.3 Safety Precautions.** The CMAR shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The CMAR shall also be responsible, at the CMAR's sole cost and expense, for all measures necessary to protect any property adjacent to the Site and improvements thereon. The CMAR shall promptly repair any damage to such property or improvements. Without limiting the indemnity provisions elsewhere in the Contract, the CMAR shall indemnify, defend and hold harmless the indemnified parties from and against any and all liabilities, claims or demands (including attorney's fees and costs) arising out of or resulting from damage to such property or improvements.

**10.2.4 Use of Explosives or Hazardous Materials.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the CMAR shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the CMAR shall secure the Owner's approval prior to their storage or use.

**10.2.5 CMAR Liability.** The CMAR shall promptly remedy damage and loss to any property caused in whole or in part by the CMAR or Subcontractor or anyone or by anyone for whose acts they may be liable.

**10.2.6 Safety Representative.** The CMAR shall designate a responsible member of the CMAR's organization at the Site whose duty shall be the prevention of accidents. This person shall be the CMAR's superintendent unless otherwise designated by the CMAR in writing to the Owner and Architect. This person shall conduct regular safety meetings for employees of the CMAR and Subcontractors engaged in construction activities at the Site.

**10.2.7 Loading Precautions.** The CMAR shall not load or permit to be loaded any part of the Project including the structure or the Site in such a way as to cause damage to or endanger the Project or any persons or entities at the Site during or after completion of the work.

**10.2.8 Accident Reports.** The CMAR shall immediately report in writing to the Architect all accidents arising out of or in connection with the work which cause death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injuries or serious damages are caused, immediately report the accident by telephone or messenger to the Architect and Owner.

**10.2.9 Safety Cooperation.** The CMAR and its Subcontractors shall cooperate fully with all interested persons on accident prevention.

**10.2.10 Risk of Loss.** The CMAR shall be fully responsible for, and shall bear the full risk of loss of, all the CMAR's tools, equipment, materials, and other property, notwithstanding any security measures for the Site provided by the Owner.

### **10.3 EMERGENCIES.**

In an emergency affecting safety of persons or property, the CMAR shall act, at the CMAR's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CMAR on account of an emergency shall be determined as provided in Section 4.2 and Article 7.

**ARTICLE 11**      **INSURANCE****11.1 CMAR-PROVIDED INSURANCE.**

**11.1.1 Scope.** The CMAR and Subcontractors shall purchase from and maintain in a company or companies authorized to do business in Arizona insurance specified in the CMAR Construction Contract as well as the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CMAR, his agents, representatives, employees, or subcontractors. Such insurance shall be effective for the duration of the contract and for ten (10) years thereafter.

**11.1.1.1 Workers' Compensation.** Workers' Compensation insurance with statutory limits as required by the State of Arizona and Employer's Liability insurance with limits of no less than \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by disease and a \$1,000,000 policy limit for bodily injury by disease. Such Workers' Compensation insurance will cover obligations imposed by federal and state statutes having jurisdiction of CMAR's or Subcontractors' employees while performing work at locations other than the Site and shall cover CMAR's employees after Substantial Completion of the work and Subcontractor's employees after Subcontractor has substantially performed its Subcontract.

**11.1.1.2 Commercial General Liability.** Commercial General Liability insurance, with a combined single limit of \$5,000,000 per occurrence and in the annual aggregate. Such insurance shall include coverage for Bodily Injury, Property Damage, Personal Injury, Broad Form Property Damage (including Completed Operations), Contractual, Contractors' Protective, Products and Completed Operations, and the hazards commonly referred to as "XCU." This insurance shall also be required for work performed at locations other than the Site, shall cover CMAR after Substantial Completion of the work, and shall cover Subcontractor after Subcontractor has substantially performed its Subcontract. Further, this insurance shall contain a severability of interest provision.

**11.1.1.3 Business Automobile Liability.** Business Automobile Liability insurance, with a combined single limit no less than \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage with respect to all vehicles used in performance of the work on or off the Site, whether owned, non-owned, leased, hired, assigned, or borrowed. If CMAR, his agents, representative, employees, or subcontractors are operating in the Air Operations Area (airside), the combined single limit for Bodily Injury and Property Damage shall be no less than \$5,000,000 per accident.

**11.1.1.4 Builders Risk.** An "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Such coverage shall name the Phoenix Mesa Gateway Airport Authority as a loss payee as their interest may appear.

**11.1.1.5 Property Insurance.** All-risk property insurance covering damages and/or destruction of all materials which will become part of the work until such materials are delivered to the Site.

**11.1.2 Additional Insured.** The policies required by Sections 11.1.1.2 & 11.1.1.3 herein shall be endorsed to include Phoenix-Mesa Gateway Airport Authority and the Architect and their officers' employees, successors and assigns as additional insured, shall provide that the insurance shall be primary, and shall stipulate that any insurance carried by the additional insured and their officers or employees, shall not be contributory insurance.

**11.1.3 Waiver.** CMAR and Subcontractors waive all rights of recovery against Phoenix-Mesa Gateway Airport Authority and the Architect, their directors, officers, employees, successors and assigns, and shall require its insurers to waive all rights of subrogation against Phoenix-Mesa Gateway Airport Authority and the Architect, and all of their respective directors, officers, employees, successors and assigns.

**11.1.4 CMAR to Provide Certificates of Insurance.** Before commencing any work under this Contract, CMAR shall furnish Owner with Certificates of Insurance issued by CMAR's and Subcontractors' insurer(s), as necessary, in a form acceptable to Owner, as evidence that the insurance policies, including all applicable endorsements, providing the coverage, conditions, and limits required by this Section 11.1, are in full force and effect. Owner has the right to request and receive promptly from the CMAR certified copies of any or all of such insurance policies and/or endorsements. Owner will not be obligated, however, to review such certificates, policies, and endorsements, or to advise CMAR of any deficiencies in such documents, and such receipts shall not relieve CMAR from, or be deemed a waiver of, Owner's right to insist on strict fulfillment of CMAR's obligations hereunder.

**11.1.5 Cancellation Notice.** CMAR's and Subcontractors' Certificates of Insurance shall identify the Contract number and shall provide for not less than thirty (30) days' advance notice of any cancellation, termination, or alteration **affecting the minimum required amounts of insurance (Addendum No. 2, 5.11.17)**. All such certificates, endorsements, and notices shall be sent to the following:

Owner:	Phoenix-Mesa Gateway Airport Authority
Address:	5835 South Sossaman Road Mesa, Arizona 85212-6014
Attn:	Mr. Bob Draper, PE – Engineering and Facilities Director

**11.1.6 Costs of CMAR-Provided Insurance.** Costs of all insurance coverage required by Section 11.1 are the sole responsibility of the CMAR.

**11.1.7 Cancellation of Insurance.** In the event that any insurance coverage for the work is cancelled or terminated, CMAR agrees to replace the insurance without any lapse of protection to Owner.

**11.1.8 Contractual Obligations.** The stipulation of insurance coverage in this Section 11.1 shall not be construed to limit, qualify, or waive any liabilities or obligations of CMAR, assumed or otherwise, under this Contract.

**11.1.9 Notice of Loss.** All physical loss or damage to the work or to Owner property must be reported immediately to the Owner.

**11.1.10 Higher Limits.** If the CMAR maintains higher limits than the minimums stated in this Article 11, Owner requires, and shall be entitled to, coverage for the higher limits maintained by the CMAR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Owner.

**11.1.11 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to, and approved by, Owner. At the option of Owner, either: the CMAR shall reduce or eliminate



such deductibles; or the CMAR shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**11.1.12 Claims Made Policy.** No Claims Made policies, other than Professional Liability, Cyber Liability or Pollution Legal Liability (if applicable to this Contract), will be accepted. For policies that provide claims made coverage:

- .1 The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
- .2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
- .3 If coverage is canceled or non-renewed, and not replaced with another claims made policy with a retroactive date prior to the contract effective date, or start of work date, the CMAR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- .4 A copy of the claims reporting requirements must be submitted to the Owner for review.
- .5 If the services involve lead-based paint or asbestos identification/remediation, the CMAR's Pollution Legal Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the CMAR's Pollution Legal Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**11.1.13 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than "A-" unless otherwise acceptable to the Owner.

**11.1.14 Subcontractors.** CMAR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CMAR shall ensure that Owner is an additional insured on insurance from subcontractors.

**11.1.15 Special Risks or Circumstances.** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances

## **11.2 PERFORMANCE AND PAYMENT BONDS.**

**11.2.1 A.R.S. § 34-222.** CMAR shall obtain, at its own expense, performance and payment bonds as required by A.R.S. § 34-222. CMAR warrants that its payment and performance bonds fully comply with A.R.S. § 34-222.

**11.2.2 Copies to Potential Beneficiaries.** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the CMAR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK****12.1 UNCOVERING OF WORK.**

**12.1.1 Duty to Uncover Work.** If a portion of the work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract, it must, if required in writing by the Architect, be uncovered for its observation and be replaced at the CMAR's expense without change in the Contract Time.

**12.1.2 Cost of Uncovering Work.** If the CMAR covers a portion of the work that the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such work and the CMAR shall uncover it. If such work is in accordance with the Contract, an appropriate Change Order shall charge costs of uncovering and replacement to the Owner. If such work is not in accordance with the Contract, the CMAR shall pay such costs.

**12.2 CORRECTION OF WORK.**

**12.2.1 Duty to Correct Rejected Work.** The CMAR shall promptly correct all work rejected by the Owner or Architect as defective or failing to conform to the requirements of the Contract, whether observed before or after Substantial Completion of the work and whether or not fabricated, installed or completed. The CMAR shall bear costs of correcting such rejected work including the replacement or repair of other work affected by CMAR's performance, including additional testing and inspection and compensation for the Architect's services made necessary thereby. Work rejected before Final Completion shall be corrected prior to Final Payment

**12.2.2 One-Year Duty to Correct Work.** Without limiting the Owner's statutory, common law, or rights arising out of this Agreement, if within one year after the date of Substantial Completion of the work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract, any of the work is found to be defective or not in accordance with the requirements of the Contract, the CMAR shall correct it promptly after receipt of written notice from the Owner to do so. The CMAR shall bear all costs of correcting such defective work, including replacement or repair of other work affected by the defect and any other damages resulting from such defect. The obligations under this Section 12.2.2 shall survive Final Payment to the CMAR.

**12.2.3 Removal of Nonconforming Work.** The CMAR shall remove from the Site, at no additional cost, portions of the work that are not in accordance with the requirements of the Contract and are neither corrected by the CMAR nor accepted by the Owner.

**12.2.4 Owner's Right to Correct Nonconforming Work.** If the CMAR fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. If the CMAR does not proceed with correction of such nonconforming work within a reasonable time fixed by written notice from the Owner or the Architect, the Owner may remove it and store the salvable materials or equipment at the CMAR's expense. If the CMAR does not pay costs of such removal and storage within ten (10) days thereafter, the Owner may sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting the costs that should have been borne by the CMAR, including compensation for the Architect's additional services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the CMAR should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall pay the difference to the Owner.

**12.2.5 Cost of Correcting Other Affected Work.** The CMAR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, CMAR or other contractors caused by the CMAR's correction or removal of work which is defective or not in accordance with the requirements of the Contract.

**12.2.6 Warranty Periods.** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to obligations that the CMAR has under the Contract or at law, including Section 3.6. Establishment of the time period of one year as described in Section 12.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract, relates only to the specific obligation of the CMAR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CMAR's liability with respect to the CMAR's obligations.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK.**

If the Owner prefers to accept work that is not in accordance with the requirements of the Contract, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable for the difference in value together with an allowance for damage or loss of quality. Such adjustment shall be effected whether or not Final Payment has been made.

**ARTICLE 13**      **MISCELLANEOUS PROVISIONS****13.1 GOVERNING LAW.**

The laws of the State of Arizona shall govern the Contract.

**13.2 SUCCESSORS AND ASSIGNS.**

The Owner and CMAR respectively bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract.

**13.3 THIRD PARTY BENEFICIARY.**

This Contract is not intended to benefit any third party.

**13.4 NOTICES.**

**13.4.1 Methods of Notice.** All notices under this Contract shall be in writing and sent to the appropriate person and will be deemed properly given if sent by (i) personal delivery (hand carried), (ii) facsimile transmission, (iii) express mail, postage prepaid, return receipt requested, or (iv) certified United States mail, postage prepaid, return receipt requested, addressed as follows:

Architect	DWL Architects & Planners, Inc. 2333 North Central Avenue Phoenix, AZ 85004 Attn: Sandra Kukla
Owner:	Phoenix-Mesa Gateway Airport Authority 5835 South Sossaman Road Mesa, Arizona 85212-6014 Attn: Mr. Bob Draper, PE – Engineering and Facilities Director

With a copy to:

CMAR: \_\_\_\_\_  
\_\_\_\_\_

Each party may by notice to the others specify a different address for subsequent notice purposes. Notice is effective on the date of actual receipt or three (3) days after the date of mailing, whichever is earlier.

**13.4.2 Authorized Persons.** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### 13.5 RIGHTS AND REMEDIES.

**13.5.1 Legal Rights.** Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. This clause shall not be interpreted to permit the CMAR to recover any costs or damages that are otherwise limited, prohibited or waived by the Contract.

**13.5.2 No Waiver.** No action or failure to act by the Owner, Architect or CMAR shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 13.6 TESTS AND INSPECTIONS.

**13.6.1 CMAR's Duty to Administer.** Tests, inspections and approvals of portions of the work required by the Contract or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at the appropriate time. Unless otherwise provided, the CMAR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory selected and paid for by the Owner or with the appropriate public authority. The CMAR shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. Any of the work requiring testing, inspection or approval which is covered or otherwise made inaccessible without the consent of those requiring or making the inspection or test shall be uncovered or made accessible by and at the expense of the CMAR. CMAR shall be responsible for any testing, retesting or other charges resulting from CMAR's failure to perform.

**13.6.2 Additional Testing and Inspection.** If the Architect, Owner or public authorities having jurisdiction determine that portions of the work require additional testing, inspection or approval not included under Section 13.6.1, the Architect will, upon written authorization from the Owner, instruct the CMAR to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the CMAR shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear such costs except as provided in Section 13.6.3.

**13.6.3 Costs for Testing and Inspection.** If such procedures for testing, inspection or approval under Sections 13.6.1 and 13.6.2 reveal failure of the portions of the work to comply with requirements established by the Contract, the CMAR shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

**13.6.4 Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract, be secured by the CMAR and promptly delivered to the Architect.

**13.6.5 Prompt Testing and Inspection.** Tests or inspections conducted pursuant to the Contract shall be made promptly to avoid unreasonable delay in the work.

### 13.7 MANUFACTURERS' NAMEPLATES.

Manufacturers' nameplates shall not be permanently attached to ornamental and miscellaneous metal work, doors frames, millwork, and similar factory fabricated products on which, in the Architect's and Owner's opinion, the nameplates would be objectionable, if visible after installation of the work. This provision does

not apply to underwriters' labels when required, or to the manufacturers' name and rating plates on mechanical and electrical equipment.

### **13.8 MANUFACTURERS' INSTRUCTIONS.**

All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturers' written specifications or instructions. In case of any difference or conflicts between the requirements of the manufacturers' instructions or specifications and the technical sections of the Specifications, the CMAR shall promptly report any such difference or conflict to the Architect.

**13.8.1 Equal Employment Opportunity.** CMAR shall comply with the terms of: (1) Section 503, Public Law 93-112, and the regulations at 41 CFR Part 60-741; (2) Executive Order 11246, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60; and (3) Section 402, Public Law 93-508, and the regulations at 41 CFR Part 60-250.

**13.8.2 Compliance with State Executive Order No. 99-4 (Amending 75-5).** The CMAR shall comply at all times with Arizona Executive Order 75-5, as amended by Executive Order 99-4.

### **13.9 HEADINGS.**

The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provision of this Agreement.

### **13.10 INTERPRETATION.**

In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. To the extent permitted by the context in which used, (a) words in the singular member shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; and (b) (unless specified otherwise) references to paragraphs, sections or articles are to paragraphs, sections or articles of the General Conditions to the Construction Contract.

### **13.11 RECORDS RETENTION AND INSPECTION.**

The CMAR shall make available at its office all CMAR books, documents, papers, drawings and records relating to this Project for audit, inspection, excerpt, reproduction, or transcription by any authorized representative of the Owner, Contractors and subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any CMAR and Subcontractor employee who works on the Contract, to ensure that the CMAR and its Subcontractor are complying with the warranty under Item 48 below (all the foregoing hereinafter referred to as the Records), shall be open to inspection and subject to audit and/or reproduction during normal working hours to the extent necessary to adequately permit (1) evaluation and verification of any invoices, payments or claims based on Contractors and its Subcontractors actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract and (2) evaluation of the Contractors and Subcontractors compliance with the Arizona employer sanctions laws

referenced Paragraph 3.3.4 of the General Conditions. To the extent necessary for the audit of Records as set forth in this Section, CMAR and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Authority shall have access to said Records from the effective date of this Contract for the duration of the work and until five years after the date of final payment by the Authority to CMAR pursuant to this Contract. The Authority shall have access, during normal working hours, to all necessary CMAR and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this subsection. The Authority shall give CMAR or Subcontractor reasonable advance notice of intended audits. CMAR shall require its Subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract. If any information required of the CMAR or a Subcontractor is in the exclusive possession of another who fails or refuses to furnish this information, the CMAR shall so certify to the Owner, FAA, ADOT Aeronautics, EDA and the Office of Inspector General, or the Comptroller General of the United States, and shall set forth what efforts it has made to obtain the information.

### **13.12 FOREIGN NATIONALS.**

The CMAR certifies that: (1) it is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the office of the United States Trade Representative; (2) it has not knowingly entered into any contract or subcontract for this project with a CMAR that is a citizen or national of a foreign country on the list or a CMAR that is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on the list; and (3) it has not procured any product or subcontracted for the supply of any product for use on the project that is produced in a foreign country on the list. Unless the restrictions of this clause have been waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CMAR or subcontractor who is unable to certify to the above. If the CMAR knowingly procures or subcontracts for the supply of any product or service of a foreign country on this list for use on the Project, the FAA through the Owner may cancel the contract at no cost to the Owner. Further, the CMAR agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts related to the Project. Making false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, U.S.C. Section 1001.

**13.12.1 CMAR Certification.** Pursuant to Arizona Revised Statutes Section 35-397, the CMAR certifies that it does not have a scrutinized business operation in either Sudan or Iran.

### **13.13 WORK HOURS AND SAFETY STANDARDS.**

With regard to the employment of mechanics and laborers, the CMAR shall comply with sections 103 and 107 of the Contract work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

### **13.14 ENVIRONMENTAL COMPLIANCE.**

**13.14.1** The CMAR shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

**13.14.2** At its sole cost and expense, the CMAR shall at all times promptly observe and comply with all applicable federal, state, and local laws, regulations, and standards and in particular with those provisions concerning the environment and pollution control and abatement, waste minimization and pollution prevention that are, or may become, applicable to the work.

**13.14.3** The CMAR shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Contract, independent of any existing Owner permits.

**13.14.4** To the fullest extent permitted by law, the CMAR shall save, indemnify, defend and hold harmless the Owner, Architect, and the federal government from any damages, costs, expenses, liabilities, fines, or penalties resulting from or relating to releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by the CMAR, its officers, agents, employees, or contractors, or the invitee of any of them under federal, state or local environmental laws. This provision shall survive the termination or completion of this Contract, and the CMAR's obligations under this Section 13.22.4 shall apply whenever the Owner or the federal government incurs costs or liability for the CMAR's actions of the types described in this Section 13.22.

**13.14.5** The Owner's rights under this Contract specifically include the right to inspect upon reasonable notice the Site for compliance with environmental, safety, and occupational health laws and regulations. The CMAR shall have no claim against the Owner or any officer, agent, employee, or CMAR of the Owner on account of any entries.

**13.14.6** The CMAR shall comply with all federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. The CMAR shall be liable for the cost of proper disposal of any hazardous waste it generates or for that waste generated by Subcontractors or assigns in the event of failure by a Subcontractor or assign to properly dispose of such wastes. Where required, the Owner may act on behalf of CMAR to dispose of CMAR-derived waste, sign manifests on behalf of CMAR, and assign such disposal to CMAR's EPA ID number. CMAR shall repay the Owner the costs and fees for doing so.

**13.14.7** The CMAR shall strictly comply with the hazardous waste permit requirements under RCRA, or its state equivalent, and any other applicable laws, rules, or regulations.

**13.14.8** The CMAR shall not conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without Owner's prior written approval.

### **13.15 ENERGY CONSERVATION AND POLICY ACT COMPLIANCE.**

This agreement is executed in recognition that the CMAR and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).



**ARTICLE 14      TERMINATION OR SUSPENSION OF THE CONTRACT****14.1      TERMINATION BY THE OWNER FOR CAUSE.**

**14.1.1 Criteria for Termination for Cause.** The Owner may terminate the Contract if the CMAR:

- .1 more than once refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CMAR and the Subcontractors;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 breaches any provision of the Contract;
- .5 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the CMAR's ability to complete the work in compliance with all the requirements of the Contract; or
- .6 fails after commencement of the work to proceed diligently and continuously with the construction and completion of the work for more than seven (7) days, except as permitted under the Contract.

**14.1.2 Effect of Termination for Cause.** When any of the above conditions exist, the Owner, after consultation with and certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the CMAR and the CMAR's Surety, if any, ten (10) days' written notice, terminate the Contract and may, subject to any prior rights of the Surety:

- .1 take possession of the Site and all materials, equipment, tools, and construction equipment machinery thereon owned by the CMAR;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the work by whatever reasonable method the Owner may deem expedient.

**14.1.3 CMAR Right to Receive Payment.** When the Owner terminates the Contract for one of the reasons stated in Section 14.1.1, the CMAR shall not be entitled to receive further payment until the work is finished.

**14.1.4 Costs for Finishing Work.** If the unpaid balance of the Contract Sum exceeds costs of finishing the work, including compensation for Architect's services and expenses made necessary thereby, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR shall pay the difference to the Owner. The amount to be paid to the CMAR or Owner, as the case may be, shall, upon application, be certified by the Architect, and this obligation for payment shall survive termination of the Contract.

**14.2      SUSPENSION BY THE OWNER FOR CONVENIENCE.**

**14.2.1 Owner's Right.** The Owner may, without cause, order the CMAR in writing to suspend, delay or interrupt the work in whole or in part for such period of time as the Owner may determine.

**14.2.2 Adjustment in Contract Sum.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CMAR is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

**14.2.3 Method for Adjustment in Contract Sum.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

### **14.3 OWNER'S TERMINATION FOR CONVENIENCE.**

**14.3.1 Effect of Termination for Convenience.** The Owner reserves the right to terminate the Contract for convenience and without cause even if CMAR has not failed to perform any part of the Contract. Termination of the work hereunder shall be effected by written notice to the CMAR. Upon receipt of such notice, CMAR shall, unless the notice otherwise directs:

- .1 Immediately discontinue the work and the placing of all orders and subcontracts in connection with this Contract;
- .2 Immediately cancel all of the existing orders and subcontracts made hereunder;
- .3 Immediately transfer to the Owner all materials, supplies, work in progress, appliances, facilities, machinery and tools acquired by the CMAR in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the work relating to this Contract; and
- .4 Deliver all plans, Drawings, Specifications and other necessary information to the Owner.

**14.3.2 CMAR's Exclusive Remedy.** If the Owner terminates the Contract for convenience, the following shall be the CMAR's exclusive remedy:

- .1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the work;
- .2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the CMAR in performing the Contract; and
- .3 Payment of profit, in so far as profit is realized hereunder, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of completion of the work. In no event shall the CMAR be entitled to anticipated fees or profits on work not required to be performed.

**14.3.3 Warranties, Guarantees and Indemnified Parties to Remain in Effect.** All obligations of the CMAR under the Contract with respect to completion of the work, including but not limited to all warranties, guarantees and indemnities, shall apply to all work completed or substantially completed by the CMAR prior

to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the CMAR shall be without prejudice to any claims or legal remedies that the Owner may have against the CMAR for any cause, including liquidated damages assessed for CMAR's delays to any work Milestone Dates.

**14.3.4 Conversion of Termination for Cause to Termination for Convenience.** Upon a determination that a termination of this Contract other than a termination for convenience under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article 14, and the CMAR's remedy for such wrongful termination shall be limited to the recoveries specified under Section 14.3.2.

**14.3.5 Remedy Limited to Damages.** In the event that CMAR is terminated, whether for cause or convenience, the CMAR's sole remedy shall be for damages. In no event shall the CMAR be entitled to reinstatement or other equitable relief from a court or through alternative dispute resolution.

**14.3.6 Notice that Contract is Subject to Termination Provisions of A.R.S. § 38-511.** The parties acknowledge, and as required by law, notice is hereby given that this Contract is subject to A.R.S. § 38-511.

## **END GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT**