

**DIVISION I**



**NEW AIR TRAFFIC CONTROL TOWER  
CONSTRUCTION MANAGER AT RISK (CMAR)  
CONSTRUCTION SERVICES CONTRACT  
PROJECT NO. 927**

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# Phoenix Mesa Gateway Airport Authority

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## Construction Manager at Risk

### Construction Services

Project No.: 927

**THIS CONTRACT** is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Phoenix Mesa Gateway Airport Authority, a joint powers airport authority authorized by the state of Arizona, hereinafter called "Owner" and the "Construction Manager at Risk" or "CMAR" designated below. Individually, each is a "Party" and collectively, the "Parties."

NOW, THEREFORE, intending to be legally bound and for valuable consideration, the receipt and sufficiency of which are acknowledged, the Owner and CMAR agree as follows:

## ARTICLE 1 - PARTICIPANTS AND PROJECT

**Owner:** Phoenix-Mesa Gateway Airport Authority  
Project Manager: Bob Draper  
Telephone: 480-988-7705  
Fax: 480-99-2315  
E-mail: bdraper@gatewayairport.com

**CMAR:** [name], a(n) [type]  
Address  
City ST Zip  
Arizona ROC No.: \_\_\_\_\_  
Federal Tax ID No.: \_\_\_\_\_  
CMAR Representative:  
Telephone:  
Fax:  
E-mail:

**DESIGN PROFESSIONAL:** Leo A Daly  
8600 Indian Hills Drive  
Omaha, NE 68114  
Design Professional Representative: Daniel J. Dellovechio  
Telephone: 402-390-4463  
Fax:  
E-mail: djdellovechio@leoadaly.com

**PROJECT DESCRIPTION:** New Air Traffic Control Tower Construction

**PROJECT LOCATION:** Phoenix Mesa Gateway Airport  
Mesa, Az 85212

## **ARTICLE 2 – CONTRACT DOCUMENTS**

### **2.1 CONTRACT DOCUMENTS**

The Contract between Owner and CMAR shall consist of the following Contract Documents:

1. This Contract and all of its Exhibits, including subsequent Specifications and Plans
2. The RFQ requirements, documents, and CMAR's submittal to such solicitation (2019-017-RFQ))
3. General Conditions to the CMAR Contract
4. General Provisions to the CMAR Contract
5. Special Provisions to the CMAR Contract
6. Any plans and drawings
7. Any amendments or modifications to the foregoing documents, including (a) a written amendment signed by both parties, (b) a Change Order, (c) a Change Directive, (d) Supplementary Instructions, or (e) a written order for a minor change in the work (collectively the "Contract").
8. Guaranteed Maximum Price (GMP)

### **2.3 PROJECT SPECIFIC CONDITIONS**

If there are any additional conditions that apply to this Project, they are set forth in the attached Exhibit D, and are incorporated herein.

### **2.4 PROJECT PLANS AND SPECIFICATIONS**

A detailed list of the Plans and Specifications for this Project are set forth in the attached Exhibit D.

## **ARTICLE 3 – PRE-CONSTRUCTION SERVICES**

Although CMAR has performed Pre-Construction Services pursuant to a separate Contract between Owner and CMAR, the completion, quality and accuracy of those services and the deliverables provided by Owner thereunder directly impact CMAR's performance of its obligations under this Contract. Therefore, all of CMAR's obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Contract and are incorporated herein. Any breach of any of CMAR's duties, obligations, or warranties under the Pre-Construction Services Contract shall likewise be considered a breach of this Contract.

## **ARTICLE 4 – CONSTRUCTION SERVICES**

### **4.1 GENERAL**

- 4.1.1 CMAR agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the Project Schedule included in Exhibit A of this Contract.
- 4.1.2 CMAR shall provide all of the labor and materials and perform the Work in accordance with the General Conditions and General Provisions. Some but not all of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.
- 4.1.3 At all times relevant to the Contract and performance of the Work, the CMAR and its subcontractors shall fully comply with all Laws, Regulations, or Legal Requirements applicable to Owner, the Project

and the Contract, including, without limitation, those set forth on attached Exhibit C and Article 3 of the General Conditions.

- 4.1.4 CMAR shall perform the Work under this Contract using only those firms, team members and individuals designated by CMAR consistent with the Statement of Qualifications dated February 14, 2019, the GMP Proposal, or otherwise approved by Owner pursuant to the General Conditions. No other entities or individuals may be used without prior approval of the Project Manager.
- 4.1.5 CMAR will comply with all terms and conditions of the General Conditions, General Provisions and Special Provisions, as well as the Owner's published Rules & Regulations and Minimum Standards (Exhibit J).
- 4.1.6 In the event of a conflict between this Contract and the General Conditions, General Provisions, Special Provisions or any exhibit hereto or appendix thereto, the terms of this Contract shall control, but nothing in this contract shall be construed so as to either (i) Violate any term or condition of the Owner's published Rules & Regulations or Minimum Standards; or (ii) Violate Owner's mandatory subordination to its federal obligations, pursuant to Federal Aviation Administration ("FAA") Policies (2009) (including, but not limited to § 1.1, § 1.5, § 12.3, §10, § 14.1, *et seq.*) and federal statutory authority, including, but not limited to, 49 U.S.C. §40103(a) (establishes the federal government's total dominance over the airspace of the United States, including, U.S. airports).
- 4.1.7 **Ownership of Work Product.** Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Owner. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, CMAR hereby transfers and assigns ownership of the copyright in such Work to Owner. The rights in this section are exclusive to Owner in perpetuity.

#### **4.2 CMAR's PRE-CONTRACT AND PRE-WORK DELIVERABLES**

The CMAR will provide the insurance and bond(s) requirements in accordance with Article 11 of the General Conditions prior to any work commencing.

Owner will obtain and pay for all permits necessary for the work.

#### **4.3 PRE-CONSTRUCTION CONFERENCE**

CMAR shall attend the Pre-Construction Conference.

#### **4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**

CMAR shall perform the Work in accordance with the General Conditions.

#### **4.5 CONTROL OF THE PROJECT SITE**

CMAR shall control and maintain the Project Site in accordance with Article 4 of the General Conditions.

#### **4.6 PROJECT SAFETY**

CMAR shall implement and enforce Project safety in accordance with Article 10 of the General Conditions.

#### **4.7 MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS**

CMAR shall provide materials testing and submit substitute materials and Shop Drawings in accordance with Article 3 of the General Conditions.

#### **4.8 PROJECT RECORD DOCUMENTS**

CMAR shall maintain and make available the Project Record Documents in accordance with Article 3.12 of the General Conditions.

#### **4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK**

CMAR shall provide warranties and correct defective Work in accordance with Article 3.6 of the General Conditions.

### **ARTICLE 5 – OWNER RESPONSIBILITIES**

- 5.1 Owner shall have the responsibilities, and provide the information specified in, and subject to the conditions set forth throughout the Contract Documents.
- 5.2 Additional information to be provided by Owner, if any, is listed below:

Final contract documents, including, but not limited to General Conditions, General Provisions, Special Provisions, applicable as-built drawings, stamped Construction Documents and Technical Specifications.

### **ARTICLE 6 – CONTRACT TIME**

Contract Duration is **TBD** calendar days

#### **6.1 CONTRACT TIME**

- 6.1.1 The Contract Time shall start with the Notice to Proceed (“NTP”) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued prior to the approval and acceptance by Owner of the GMP or Fixed Price.
- 6.1.2 CMAR agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.
- 6.1.3 Time is of the essence of this Contract, for the Project, and for each phase and/or designated Milestone thereof.

#### **6.2 PROJECT SCHEDULE**

The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached Exhibit A shall be updated and maintained throughout CMAR’s performance under this Contract in accordance

with Article 3 of the General Conditions.

- 6.2.1 Failure on the part of CMAR to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination for cause of this Contract by Owner.

### 6.3 SUBSTANTIAL COMPLETION

Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion shall be determined in accordance with Article 9.8 of the General Conditions.

### 6.4 FINAL COMPLETION AND FINAL ACCEPTANCE

- 6.4.1 Final Completion will be obtained within the time period set forth in the Project Schedule.
- 6.4.2 Final Completion will be determined, and a Final Acceptance will be issued, pursuant to Article 9.9 of the General Conditions.

### 6.5 LIQUIDATED DAMAGES

- 6.5.1 **Final Completion Liquidated Damages.** For the same reason set forth in Article 6.1.3 above, Owner and CMAR further agree that if CMAR fails to achieve Final Completion of the Work within the time set forth in Article 6.4.1 above, Owner shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amounts (which the Parties agree is a reasonable approximation of any resulting damages) commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion:

**\$2,500 per calendar day.**

- 6.5.2 Owner may deduct liquidated damages described in this Article 6.5 above from any unpaid amounts then or thereafter due CMAR under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due CMAR shall be payable to Owner at the demand of Owner, together with interest from the date of the demand at the highest lawful rate of interest payable by CMAR.

## **ARTICLE 7 – CONTRACT PRICE**

### 7.1 CONTRACT PRICE

- 7.1.1 In exchange for CMAR's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, Owner will pay CMAR the "Contract Price" which:

The sum of the CMAR's Fee and reimbursable Cost of the Work, which the CMAR guarantees will not exceed the GMP set forth in Exhibit A, in the amount of

\$ **TBD**. Costs which would cause the GMP to be exceeded shall be

paid by CMAR without reimbursement from Owner.

- 7.1.2 The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes any type necessary to fully, properly and timely perform and construct the Work encompassed in attached Exhibit A.

- 7.1.3 The contract price may only be changed as set forth in the Contract Documents.
- 7.1.4 Only costs specifically designated as reimbursable costs are eligible for payment by Owner or may be charged against the Contract Price. All other costs will not be paid by Owner and shall not be chargeable against the Contract Price.
- 7.1.5 For Contract Amendments, Change Orders, or Job Orders reimbursable costs shall be determined pursuant to MAG Specifications 109.5.

## **7.2 ALLOWANCES**

Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by Owner. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Owner in accordance with a schedule to be mutually agreed upon by Owner, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

- 7.2.1 Unless otherwise provided in the Contract Documents:
  - 7.2.1.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowances, delivered at the Site, and all applicable taxes;
  - 7.2.1.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and Equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and
  - 7.2.1.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

## **7.3 CONTINGENCY**

An agreed to amount in the GMP that may only be used in accordance with the terms set forth in these General Conditions and with prior written approval by Owner.

## **7.4 FINAL PAYMENT**

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by Owner, Contractor must submit to the Project Manager a complete final accounting of the Actual Reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Owner may require, to establish whether the payments made to Contractor equal, exceed, or are less than the Actual Reimbursable Cost of the Work to date.

Any excess payments by Owner, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Owner. Disputes relating to the Final Cost of the Work shall be subject to Owner's audit rights under Article 13.14 of the General Conditions and 7.5 below, and the dispute resolution process under Article 4 of the General Conditions.

## **7.5 OPEN BOOK**

On any GMP-based or Change Order, Owner may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

## **ARTICLE 8 – PAYMENT**

Payments shall be made to CMAR in accordance with Article 9 of the General Conditions and Article 7 above.

## **ARTICLE 9 – CHANGES TO THE CONTRACT**

Changes to the Contract may be made in strict accordance with Article 7 of the General Conditions.

## **ARTICLE 10 – SUSPENSION AND TERMINATION**

This Contract may be suspended and/or terminated in accordance with Article 14 of the General Conditions.

## **ARTICLE 11 – INSURANCE AND BONDS**

- 11.1 CMAR shall provide insurance at the times and in the amounts in accordance with Article 11 of the General Conditions to the CMAR Contract. CMAR shall provide proof of such insurance and all required endorsements in forms acceptable to Owner prior to commencing any Work under this Contract.
- 11.2 CMAR shall provide performance and payment bonds to Owner at the times and in the amounts in accordance with Article 11 of the General Conditions and A.R.S. § 34-610(A).
- 11.3 Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to Owner will be material breach and grounds for termination for cause of this Contract by Owner.

## **ARTICLE 12 – INDEMNIFICATION**

CMAR shall have and assume the indemnity obligations set forth in Article 3 of the General Conditions.

## **ARTICLE 13 – DISPUTE RESOLUTION**

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in Article 4 of the General Conditions.

## **ARTICLE 14 – MISCELLANEOUS PROVISIONS**

The miscellaneous provisions set forth in Article 13 of the General Conditions shall apply to this Contract.

IN WITNESS WHEREOF, the parties hereto executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

**“OWNER”**  
**PHOENIX MESA GATEWAY AIRPORT AUTHORITY,**  
**a joint powers airport authority, authorized by the**  
**State of Arizona**

**“CMAR”**  
**Name, a(n) type**

By: \_\_\_\_\_  
J. Brian O’Neill, A.A.E.

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

Title: Executive Director/CEO

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

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

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

DRAFT

**EXHIBIT A - ACCEPTED GMP/PRICE PROPOSAL AND  
PROJECT SCHEDULE (Under Separate Cover)**

All terms and conditions are set forth in the Contract. Any terms and conditions and/or exceptions noted in the CMAR's proposal, GMP, or other documents do not apply unless agreed to in this Contract or an approved addendum.

DRAFT

**EXHIBIT B – PROJECT SPECIFIC CONDITIONS &  
PROJECT PLANS AND SPECIFICATIONS (Under Separate Cover)**

**1. All Specifications**

Specification Title: \_\_\_\_\_ Date: \_\_\_\_\_

**2. Plans**

Drawing Title: \_\_\_\_\_ Date: \_\_\_\_\_

Project Number: \_\_\_\_\_

DRAFT

**EXHIBIT C – REQUIRED FORMS**

**STATUTORY PERFORMANCE BOND**

PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES

**KNOW ALL MEN BY THESE PRESENTS:**

That, \_\_\_\_\_, (hereinafter called the Principal), as Principal, and the \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto Phoenix-Mesa Gateway Airport Authority, Maricopa County, Arizona (hereinafter called the Obligee), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ to construct the following projects under the **Authority Solicitation No. 2019-017-RFQ; CMAR Services for a New Air Traffic Control Tower (Authority Project No. 927)**, which contract is hereby referred to and made a part of this bond as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment to reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
**AGENCY OF RECORD, STATE OF ARIZONA**

\_\_\_\_\_  
**PRINCIPAL**

BY:

\_\_\_\_\_  
AGENCY ADDRESS

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
**SURETY**

BY:

TITLE: \_\_\_\_\_

BOND NUMBER: \_\_\_\_\_

ATTACH SURETY POWER OF ATTORNEY

**STATUTORY PAYMENT BOND**

PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES

**KNOW ALL MEN BY THESE PRESENTS:**

That, \_\_\_\_\_, (hereinafter called the Principal), as Principal and \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto Phoenix-Mesa Gateway Airport Authority, Maricopa County, Arizona (hereinafter called the Obligee), in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with Obligee, dated the \_\_\_ day of \_\_\_\_\_, 201\_ to construct the following projects under the **Authority Solicitation No. 2019-017-RFQ ; CMAR Services for a New Air Traffic Control Tower (Authority Project No. 927)**, which contract is hereby referred to and made a part of this bond as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
**AGENCY OF RECORD, STATE OF ARIZONA**

\_\_\_\_\_  
**PRINCIPAL**

BY: \_\_\_\_\_

\_\_\_\_\_  
AGENCY ADDRESS

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
**SURETY**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**BOND NUMBER:** \_\_\_\_\_

**ATTACH SURETY POWER OF ATTORNEY**

# CERTIFICATE OF SUBSTANTIAL COMPLETION

(To be completed by Owner/Architect)

I hereby certify that \_\_\_\_\_ has substantially completed  
(Name of CMAR)

The work under the following project:

**CMAR Services for an Air Traffic Control Tower, Authority Solicitation No. 2019-017-RFQ, Authority Project No. 927**

in accordance with the contract documents and bid specifications, and all activities required by the Contractor under the Contract have been substantially completed as of \_\_\_\_\_ (date).

Firm Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

DRAFT

# CERTIFICATE OF FINAL COMPLETION

(To be Completed by CMAR)

I hereby certify that all goods and/or services required by **PHOENIX-MESA GATEWAY AIRPORT AUTHORITY**, have been delivered in accordance with the Contract Documents and Specifications, and all activities required by the CMAR under the Contract have been completed, including all items on the final punch list, including administrative items, as of \_\_\_\_\_ (date).

Firm Name: \_\_\_\_\_

Principal: \_\_\_\_\_

(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

DRAFT

**CMAR'S AFFIDAVIT REGARDING  
SETTLEMENT OF CLAIMS**

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$\_\_\_\_\_, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless **PHOENIX-MESA GATEWAY AIRPORT AUTHORITY, ARCHITECT**, the OWNER's **DESIGNATED CONSTRUCTION ADMINISTRATOR**, their employees, agents or representatives, against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said OWNER and Architect may suffer arising out of the failure or the undersigned to pay for all labor performances and materials furnished for the performance of said installation.

Signed and dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
CMAR

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

STATE OF ARIZONA    )  
                                  )    ss  
COUNTY OF            )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(My Commission Expires)

# APPLICATION AND CERTIFICATE FOR PAYMENT

CONSULTANT: \_\_\_\_\_

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

Application No. \_\_\_\_\_ Period From: \_\_\_\_\_ To: \_\_\_\_\_

Application is made for payment, as shown below, and on the attached Construction Progress Estimate Form, in accordance with the Contract Documents:

Original GMP: \$ \_\_\_\_\_

Approved Change Orders and Dates:

Change Order No.1 Date \_\_\_\_\_ \$ \_\_\_\_\_

Change Order No.2 Date \_\_\_\_\_ \$ \_\_\_\_\_

Change Order No.3 Date \_\_\_\_\_ \$ \_\_\_\_\_

Total Change Orders Approved to Date: \$ \_\_\_\_\_

Adjusted GMP \$ \_\_\_\_\_

Total Amount Due to Date  
(from attached Construction Progress Estimate) \$ \_\_\_\_\_

Retainage \_\_\_\_\_ % \$ \_\_\_\_\_

Total Earned Less Retainage \$ \_\_\_\_\_

Less Previous Certificates for Payment \$ \_\_\_\_\_

Currently Payment Due \$ \_\_\_\_\_

Notice to Proceed Date \_\_\_\_\_

Date of Substantial Completion \_\_\_\_\_

Time Used \_\_\_\_\_ %

Complete \_\_\_\_\_ %

# NOTICE OF INTENT TO AWARD CMAR CONTRACT

CMAR Name  
CMAR Address

**Attn:** *CMAR Project Manager*

**Re:**  
**CMAR Services for a New Air Traffic Control Tower**  
**Authority Project No. 927**  
**Authority Solicitation No. 2019-017-RFQ**

Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (Owner), has considered the Statement of Qualifications (SOQ) submitted and interview performed (if applicable) by your firm for the above described WORK in response to the Advertisement for SOQ's dated 02/14/2019. You are hereby notified that you were awarded this CMAR Contract by Phoenix-Mesa Gateway Airport Authority on \_\_\_\_\_, in the amount of \$\_\_\_\_\_. You are required by the Terms and Conditions of this bid to execute the CMAR Contract and to furnish Contractor's Performance and Payment Bonds and submit the appropriate Certificate(s) of Insurance within fifteen (15) calendar days from this Notice.

If you fail to execute the CMAR Contract, furnish the required bonds, and submit Insurance Certificate(s) within Fifteen (15) calendar days from the date of this Notice, the Owner will consider this as a forfeiture of your consideration to be selected as CMAR. The Owner will be entitled to such other rights as may be granted by law.

A pre-construction meeting is scheduled for \_\_\_\_\_ 201\_, at \_\_\_\_\_ in the Phoenix-Mesa Gateway Airport Authority Board Room, 5835 South Sossaman Road, Mesa.

You are required to return an acknowledged copy of the NOTICE OF AWARD to the Phoenix-Mesa Gateway Airport Authority.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

**PHOENIX-MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized by the State of Arizona**

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

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

**ACCEPTANCE OF NOTICE:**

Receipt of the above NOTICE OF AWARD is hereby acknowledged.

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

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

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

NOTARY PUBLIC

My Commission Expires

## NOTICE TO PROCEED

Date

CMAR Name

CMAR Address

Attn:

**CMAR Services for a New Air Traffic Control Tower  
Authority Project No. 927  
Authority Solicitation No. 2019-017-RFQ**

Dear \_\_\_\_\_:

You are unconditionally authorized to proceed with the above-referenced project effective the date of this letter. The contract time is \_\_\_\_\_ calendar days. All work shall be performed strictly in accordance with the Contract Documents, including all project schedule requirements.

Your contact for this project is [name], phone no. (xxx) xxx-xxxx and all project communications should be directed to him. If the preconstruction conference has not already occurred, he will contact you shortly about scheduling it.

Remember, the Owner must approve *in writing* any and all changes in the project scope of work before you start work on the change.

Phoenix-Mesa Gateway Airport Authority looks forward to a successful project with your firm.

Sincerely,

**PHOENIX-MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized by the  
State of Arizona**

Authorized Representative

# CHANGE ORDER

PROJECT: CMAR Services for a New Air Traffic Control Tower

CHANGE ORDER NO: \_ \_

Authority Project No. 927  
Authority Solicitation No. 2019-017-RFQ

TO CMAR: Name  
Address

CONTRACT NO: \_\_\_\_\_  
CONTRACT DATE: \_\_\_\_\_, 201\_\_

**The Contract is changed as follows.** CMAR shall provide all labor, materials, equipment, services, transportation, utilities, and facilities to perform all of the following changes: *[describe]*.

This Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order, including but not limited to all direct or indirect costs associated with such change, all delay and disruption costs, any impact such change may have on unchanged work, and any and all adjustments to the Contract Sum or the Contract Time. This Change Order supersedes all prior reservations stated or implied.

**Not Valid until signed by the Owner, Architect, and CMAR.**

The original **Contract Sum** was.....\$ \_\_\_\_\_  
Net change by previously authorized Change Orders.....\$ \_\_\_\_\_  
The **Contract Sum** prior to this Change Order was.....\$ \_\_\_\_\_  
The **Contract Sum** will be **increased** [or **decreased**] by this Change Order.....\$ \_\_\_\_\_  
The new **Contract Sum** including this Change Order is.....\$ \_\_\_\_\_

The Contract Time will be **unchanged** [or **increased/decreased by** \_\_\_\_\_ **calendar days.**]

The Substantial Completion date for base contract work is **unchanged** [or **changed to** \_\_\_\_\_, **201\_.**]

**[CMAR],**

**Owner**

By \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

It's \_\_\_\_\_

It's \_\_\_\_\_

**Architect Name**

By \_\_\_\_\_ Date \_\_\_\_\_

It's \_\_\_\_\_

**CONDITIONAL  
FULL RELEASE OF ALL CLAIMS AND WAIVER OF LIEN  
UPON FINAL PAYMENT  
(CMAR)**

WHEREAS, the undersigned, \_\_\_\_\_ (CMAR) has furnished labor, materials, and services and/or equipment for the construction of the **CMAR Services for a New Air Traffic Control Tower, Authority Project No. 927**, at the Phoenix-Mesa Gateway Airport, Maricopa County, State of Arizona, on the Property of the Phoenix-Mesa Gateway Airport Authority, Mesa, Arizona.

NOW, THEREFORE, the undersigned, on receipt of a check from the Owner payable to the CMAR in the sum of \$ \_\_\_\_\_, said sum representing full and final payment for the above-mentioned labor, materials, services and/or equipment, does hereby waive and release any and all liens, claims of lien, and demands whatsoever that now exist or may hereafter accrue against the Owner and the Property on account of labor and materials furnished by the undersigned.

The undersigned warrants that all materials and labor placed by the undersigned in the Project are free from any claims, liens, or encumbrances and that all bills and obligations incurred for labor, taxes, withholding taxes based on payroll and payable to the United States of America or State of Arizona, premiums under a voluntary disability insurance policy, if any, carried with a private insurer, and payments to all union health, welfare, pension, apprentice training and vacation funds applicable for workmen employed on the above-described Project, in connection with the work of improvement on the Project, have been paid in full. The undersigned warrants that all subcontractors and material-men that may have delivered materials and performed work upon the Property for the Project have been fully paid or will be paid from monies received from this final payment. The undersigned shall and does hereby indemnify, save, and hold harmless the Owner and CMAR from all claims, damages, liens and losses, including all costs, professional fees, and reasonable attorney's fees, which the Owner may suffer by reason of filing of any claims, notices, liens or encumbrances, or the failure of the undersigned to obtain cancellation and discharge thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
Company Name

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_

## **EXHIBIT D - DEFINITIONS**

**Allowance** – A specific amount for a specific item of Work, if any, that Owner agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of the Owner) at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Article 7.2 above.

**Baseline Cost Model** – A breakdown and estimate of the scope of the Project developed by CMAR.

**CMAR or Construction Manager at Risk** – The person or firm selected by Owner to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with Owner. In these General Conditions, the term “Contractor” includes CMAR under both Pre-Construction and Construction Services Contracts.

**CMAR Fee or Contractor’s Fee** – An agreed to percentage in an accepted GMP that represents the Contractor’s fee for performance of the Work.

**Contract Documents** – Where compensation under the Contract is based upon a GMP accepted by Owner, the term “Contract Documents” also includes the accepted GMP Proposal.

**Contract Price** – Where compensation under the Contract based upon a GMP accepted by Owner, the term “Contract Price” refers to the GMP.

**Cost-Based Contract, Change Order, or Job Order** – A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents. These would include those generally referred to as “Cost of the Work plus a Fee with a GMP,” “Time and Materials,” or “Cost Plus a Fee.”

**Cost of the Work** – The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance on the Work. The Cost of the Work shall include only those costs set forth in Article 7 above.

**Deliverables** – The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during pre-construction may include but are limited to: the Baseline Cost Model and Schedule that validate Owner’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

**Pre-Construction Services Contract** – The Contract entered into between Owner and the CMAR for Pre-Construction Services to be provided by the CMAR, including, without limitation, the generation of a GMP Proposal. If the GMP Proposal is accepted by Owner and a CMAR Contract is entered into between Owner and CMAR, the duties, obligations and warranties of the CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting CMAR Contract.

**Pre-Construction Services** – The services to be provided under a Pre-Construction Services Contract.

**Detailed Project Schedule** – The Detailed Project Schedule developed by the CMAR for the review and approval of the Owner.

**GMP Plans and Specifications** – The plan and specifications upon which the Guaranteed Maximum price Proposal is based.

**GMP Proposal** – The proposal of Contractor submitted for the entire Work and/or portion (phases) of the Work.

**Guaranteed Maximum Price or GMP** – The Guaranteed Maximum Price set forth in the Contract.

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**EXHIBIT E – OWNER’S PUBLISHED RULES AND REGULATIONS  
AND MINIMUM STANDARDS**

CMAR agrees to comply with Phoenix-Mesa Gateway Airport Authority’s (Owner’s) published Rules and Regulations and Minimum Standards as amended from time to time.

**1. Rules & Regulations (link)**

[http://www.gatewayairport.com/documents/documentlibrary/board%20policies/rules%20and%20regulations 16-53.pdf?Uniqueifier=8gC0UBcOyg](http://www.gatewayairport.com/documents/documentlibrary/board%20policies/rules%20and%20regulations%2016-53.pdf?Uniqueifier=8gC0UBcOyg)

**2. Minimum Standards (link)**

<http://www.gatewayairport.com/documents/documentlibrary/board%20policies/airport%20minimum%20standards.pdf?Uniqueifier=8gC0UBcOyg>

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