

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 Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

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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 Engineer's request or to requirements specifically expressed in the Contract, it must, if required in writing by the Engineer, be uncovered for its observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 Cost of Uncovering Work. If the Contractor covers a portion of the work that the Engineer has not specifically requested to observe prior to its being covered, the Engineer may request to see such work and the Contractor 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 Contractor shall pay such costs.

12.2 CORRECTION OF WORK.

12.2.1 Duty to Correct Rejected Work. The Contractor shall promptly correct all work rejected by the Owner or Engineer 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 Contractor shall bear costs of correcting such rejected work including the replacement or repair of other work affected by Contractor's performance, including additional testing and inspection and compensation for the Engineer'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 Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor 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 Contractor.

12.2.3 Removal of Nonconforming Work. The Contractor 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 Contractor nor accepted by the Owner.

12.2.4 Owner's Right to Correct Nonconforming Work. If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming work within a reasonable time fixed by written notice from the Owner or the Engineer, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor 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 Contractor, including compensation for the Engineer's additional services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Contractor should have borne, the

Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 Cost of Correcting Other Affected Work. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, Contractor or other contractors caused by the Contractor'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 Contractor 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 Contractor 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 Contractor's liability with respect to the Contractor'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.

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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 Contractor 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:

Resident Engineer: Enter Engineer Firm's Name
 Address
 Address
 Attn:

Design Engineer: Enter Engineer Firm's Name
 Address
 Address
 Attn:

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:

Contractor: _____

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 Contractor 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, Engineer or Contractor 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 Contractor'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 Contractor 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 Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so the Engineer 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 Contractor. Contractor shall be responsible for any testing, retesting or other charges resulting from Contractor's failure to perform.

13.6.2 Additional Testing and Inspection. If the Engineer, 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 Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so the Engineer 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 Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer'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 Contractor and promptly delivered to the Engineer.

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 Engineer'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 Contractor shall promptly report any such difference or conflict to the Engineer.

13.9 DBE REQUIREMENTS.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Owner deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

Contractor is required to insert the above paragraph in all subcontracts or agreements it enters into, and all lower tier subcontracts and agreements, as a result of this contract, regardless of whether or not the subcontractor is a DBE.

Contractor is required to make available, upon request of Owner, a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors contain the required contract clauses and be performed in accordance with this part's provisions.

13.9.1 DEFINITIONS

13.9.1.1 Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed a DBE certification process and been granted DBE status by the Arizona Unified Certification Program or by a U.S. Department of Transportation (USDOT) recognized agency who certifies DBE applicants pursuant to the criteria contained in 49 CFR Part 26.

13.9.1.2 Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. A small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual(s) that has annual average gross receipts in excess of the cap established by federal regulation. The Secretary shall adjust this figure from time to time for inflation.

13.9.1.3 Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic

Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above-mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status shall be considered socially and economically disadvantaged individuals for purposes of this contract.

13.9.1.4 DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status from a recognized certifying entity. The joint venture is limited in scope and duration to this contract, and resources, assets and labor of the participants must be combined in an effort to accrue profit.

13.9.1.5 Sole Proprietorship is a DBE for purposes of this contract, if it is 100 percent owned, operated, and controlled by a socially and economically disadvantaged individual.

13.9.1.6 Corporation is a DBE, for purposes of this contract, if the ownership, operation, and control of the business is conditioned upon the control of its shares of stock or other equitable securities, at least 51 percent of which (of all shares) is legally and equitably owned by socially and economically disadvantaged individuals.

13.9.1.7 Partnership is a DBE, for purposes of this contract, if one or more socially and economically disadvantaged individuals own more than 51 percent of the assets or interest in the partnership's property.

13.9.1.8 Purchaser for purposes of this contract, means the Phoenix-Mesa Gateway Airport Authority.

13.9.1.9 Bidder is an individual, partnership, joint venture, corporation or firm submitting a proposal or bid to the Phoenix-Mesa Gateway Airport Authority to perform services required by the contract. The submittal may be direct or through an authorized representative.

13.9.1.10 Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as proposed and the Purchaser or Buyer to pay for such goods or services.

13.9.1.11 Subcontract is any contract at any tier below the prime contract, including purchase orders.

13.9.1.12 Supplier is a business enterprise that manufactures the goods or materials it sells.

13.9.1.13 Wholesaler, Distributor, Broker, or Jobber is a business enterprise that does not manufacture the goods or materials it sells, or does not perform the essential work of the contract. *Example: 1) A trucking company who does not own or operate the trucks necessary to perform the work, but brokers the work to another trucking firm; 2) A distributor who supplies goods or materials as a pass through from the manufacturer, without substantial alteration of the goods or materials; and, 3) A sub-tier bidder who purchases and supplies the goods and materials on behalf of the prime bidder, and delivers the goods and materials to the prime bidder without substantial alteration of the goods and materials.*

13.9.2 DBE UTILIZATION

13.9.2.1 Obligation Bidders are required to meet the DBE program bid requirements detailed in this Clause, the Request for Qualifications, and Bid Requirements and, by the submittal of a Statement of Qualification/bid or subsequent acceptance of a contract, agrees to provide opportunities for the fair and full utilization of DBE's by complying with the bid submittal and post-award requirements of this Clause. Nothing in this Clause shall be construed to require the utilization of DBE firms that are not qualified or available to perform work. Failure to comply with the requirements of this Clause constitutes a breach of the Contract. Such breach may lead to the termination or cancellation of the Contract.

13.9.2.2 DBE Program Goal For this project, the Phoenix-Mesa Gateway Airport Authority has established a (11.5%) program goal for the utilization of DBE firms.

In determining whether a Bidder has met this requirement, rounding up of DBE subcontract bid amounts shall not be allowed.

13.9.3 DEGREES OF DBE PERCENTAGE ATTAINMENT

13.9.3.1 Subcontracts with DBE Firms: DBE participation on the contract will be calculated based on that portion (dollar value) of the contract that DBEs actually perform with their own forces. This includes the cost of supplies and materials obtained by the DBE for the work on the contract, **except** when supplies and/or equipment is purchased or leased from the prime contractor or its affiliate. Special emphasis and care should be taken to ensure that the following types of participation are handled properly when preparing your bid packet, as failure to correctly calculate the allowable DBE participation in the following areas shall result in your bid being declared non-responsive if, once the Owner correctly calculates Offeror's participation percentage submitted, and it is below Owner's program goal, for the reason that Offeror did not submit good faith effort documentation.

13.9.3.1.1 Fees & Commissions: DBE firms that supply a bona fide service for a fee or commission may be counted only to the extent of the fees or commissions charged by the DBE. This includes, but is not limited to, providing professional, technical, consultant, or managerial services, and bonds or insurance specifically required for the performance of a contract. The fees must be reasonable and not excessive as compared with fees customarily allowed for similar services. **Example:** *A DBE firm that supplies uniformed officers for security or traffic control may count only the amounts shared as a commission. The hourly amount paid to the officers may not be counted. If the "per hour" bid amount to the prime contractor is \$30, and \$21 per hour will be paid to the officers, only \$9 per hour can be counted towards achieving the DBE program goal. If the firm estimates that there will be 200 hours of work, only \$2,700 of the total \$6,000 bid could be counted.*

13.9.3.1.1 Trucking & Hauling: The amount of a trucking/hauling subcontract that may be counted towards the DBE utilization requirement may be limited. A DBE must itself own and operate at least one fully licensed, insured, and operational truck that will be used on the contract. The DBE subcontractor may lease trucks from another DBE firm and receive full credit for the services of those leased vehicles. Non-DBE trucks may also be leased to perform work on the contract, but non-DBE leased trucks can be counted fully **only up to the value of transportation services provided by all DBE-owned trucks on the contract**. Any additional non-DBE leased trucks may only be credited for the fees or commissions the DBE subcontractor retains over and above the cost of the lease arrangement. **Example:** *A DBE trucking firm uses seven trucks on a job. Two are owned by the DBE and one is leased from another certified DBE firm. Four trucks are leased from a non-DBE. The amounts paid to the DBE for the services of three of the non-DBE trucks can be counted in full towards meeting the DBE requirement. Only the amount that the DBE subcontractor receives that is over and above the cost of leasing the fourth truck may be counted as DBE utilization.*

13.9.3.2 DBE Prime Contractor: A DBE prime contractor will be credited with DBE participation for that portion of the contract that they themselves perform, in addition to any portion of the contract that is subcontracted and performed by an eligible DBE subcontractor. **Example:** *If a DBE prime contractor proposes to perform 60 percent of the contract with the firm's equipment and workforce, and subcontracts 20 percent to a DBE firm and 20 percent to a non-DBE firm, DBE participation will be credited as being 80 percent.*

13.9.3.3 DBE/Non-DBE Joint Ventures: A DBE/non-DBE joint venture, functioning as the prime contractor or as a subcontractor on a Phoenix-Mesa Gateway Airport Authority project, will be credited with DBE participation on the basis of the percentage of profit accruing to the DBE firm. **Example:** *A joint venture*

made up of one DBE and one non-DBE proposes to perform 60 percent of a project quoted at \$400,000. A total of 50 percent of the profits for performing the work will go to the DBE partner in the joint venture. DBE participation will be credited at 30 percent, or \$120,000.

13.9.3.4 Lower Tier Non-DBE Participation: Subcontract dollars paid by DBE primes and/or qualifying joint ventures to non-DBE subcontractors will not be considered when determining the percentage of DBE participation on this contract. Amounts subcontracted to a non-DBE by a DBE subcontractor (2nd tier or lower) may not be counted.

13.9.3.5 DBE Suppliers: Purchases from DBE suppliers may be counted towards the program goal as follows:

13.9.3.5.1 Manufacturers: Amounts paid to a DBE supplier that manufactures or substantially alters the material or product it supplies will be credited at 100% of the expenditure when determining the percentage of DBE participation.

13.9.3.5.2 Regular Dealer: Purchases from a DBE firm that is an established, regular business that engages, as its principal business, in the purchase, sale, or lease of the products being supplied **may be credited towards the DBE program goal at sixty percent (60%) of the sale price** when determining the percentage of DBE participation.

13.9.3.5.3 Packagers, Brokers, Manufacturers' Representatives: Purchases from a DBE firm who arranges or expedites transactions not as regular dealers, **may not be counted in full** when determining DBE participation. Only the fees or commissions charged in the procurement of the materials or supplies, or fees or transportation charges for the delivery of the materials or supplies may be credited towards achievement of the DBE program goal.

13.9.4 Not Used

13.9.5 TERMINATION AND SUBSTITUTION OF DBE

13.9.5.1 Contractor will not terminate a DBE subcontractor listed in its bid response (or an approved substitute DBE) without Owner's prior written consent. This includes, but is not limited to, instances in which Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Contractor shall utilize the specific DBEs listed in its bid response (or an approved substitute DBE) to perform the work and supply the materials for which each is listed unless the Contractor obtains Owner's written consent as provided in Article 13.9.5; and

Unless Owner's consent is provided under this Article 13.9, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBE listed in Contractor's bid response (or an approved substitute DBE). Owner shall provide such written consent only if Owner agrees that the Contractor has good cause to terminate the DBE. For purposes of this Article, good cause includes the following circumstances:

- .1 The listed DBE subcontractor fails or refuses to execute a written contract;
- .2 The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;

- .3 The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- .4 The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- .5 The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1, 200 or applicable state law;
- .6 Owner has determined that the listed DBE subcontractor is not a responsible contractor;
- .7 The listed DBE subcontractor voluntarily withdraws from the project and provides Owner written notice of its withdrawal;
- .8 The listed DBE is ineligible to receive DBE credit for the type of work required;
- .9 A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- .10 Other documented good cause that Owner determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

13.9.5.2 Notice. Before transmitting to Owner its request to terminate and/or substitute a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to Owner, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor must give the DBE five days to respond to the Contractor's notice and advise Owner and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Owner should not approve the Contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), Owner may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by Offerors.

13.9.5.3 Good Faith Efforts to Find Another DBE Subcontractor. When a DBE subcontractor is terminated as provided in Article 13.9 of this section, or fails to complete its work on the contract for any reason, the Contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the program goal under this Contract. The good faith efforts shall be documented by the contractor. If Owner requests documentation under this provision, the Contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the Contractor, and Owner shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

13.9.5.4 Failure by the Contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to: 1) withholding monthly progress payments; 2) assessing sanctions; 3) liquidated damages; and or 4) disqualifying the contractor from future bidding as non-responsive.

13.9.5.5 The requirements of this Article 13.9 apply to Non-DBE prime Contractors and DBE prime Contractors.

13.9.6 ENFORCEMENT

This contract and all subsequent subcontracts entered into as a result of this contract, are subject to the requirements, provisions, and enforcement actions of 49 CFR Part 26, Subpart F, *Compliance and Enforcement*, § 26.105 and 26.107. Further, Contractor is required to insert § 26.107 in all DBE subcontracts entered into as a result of this Contract.

13.10 EQUAL EMPLOYMENT.

The Bidders are directed to Division III – *Federal Assurance Requirements*, for the latest federal Equal Opportunity requirements in addition to those stated below.

13.10.1 Equal Employment Opportunity. Contractor 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.

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

13.10.2.1 Each Contractor having a contract containing the provisions prescribed in this section shall file and shall cause each Subcontractor to file compliance reports with the Owner or the Arizona Civil Rights Division (in the form the Division prescribes) as directed. Compliance reports shall be timely filed and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the Contractor and each Subcontractor.

13.10.2.2 Bidders or prospective contractors or subcontractors shall state whether they have participated in any previous contract subject to the provisions of the Executive Order or any proceeding similar to the Executive Order and in that event shall submit on behalf of themselves and proposed subcontractors compliance reports before or as an initial part of contract award.

13.10.2.3 Whenever the Contractor or Subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance reports shall include this information from the labor unions or agency practices and policies affecting compliance as the Owner or the Arizona Civil Rights Division may prescribe; provided that, if such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training, and the labor union or agency refuses to furnish this information to the Contractor, the Contractor shall so certify to the Owner and shall set forth what efforts he has made to obtain such information.

13.10.2.4 The Owner or the Arizona Civil Rights Division require that bidders submit as part of their compliance reports a statement with supporting information and in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder deals to the effect that (a) the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and (b) the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order, or it consents and agrees that recruitment, employment, and the terms and conditions of employment under the

proposed contract shall be in accordance with the Executive Order. If the union or agency refuses to execute such a statement, the bidder shall so certify and set forth what efforts have been made to secure the required statement and additional factual material as the Owner or the Arizona Civil Rights Division may require.

13.10.3 Nondiscrimination. The Contractor shall comply with all regulations regarding nondiscrimination in federally-assisted programs of Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1966, and any amendments thereto. The Contractor shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including the procurement of materials and leases of equipment, and Contractor shall notify each potential Subcontractor or supplier of the Contractor's obligations under this Contract and the regulations cited above.

13.10.4 Sanctions for Noncompliance. If the Contractor fails to comply with the nondiscrimination and equal employment provisions of this Contract, the Owner shall impose such contract sanctions as it or the federal government may determine are appropriate, including but not limited to: (1) withholding payments to the Contractor under the Contract until the Contractor complies; and/or (2) cancellation, termination or suspension of the Contract, in whole or in part.

13.10.5 Incorporation of Provisions. The Contractor shall include the provisions of Sections 13.10.3 through 13.10.4 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued by Owner or the federal government.

13.11 ACCESS.

Contractor will accommodate reasonable access to the Site by third parties at the request of the Engineer or Owner.

13.12 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.

13.13 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.

13.14 RECORDS RETENTION AND INSPECTION.

The Contractor shall make available at its office all Contractor books, documents, papers, drawings and records relating to this Project for audit, inspection, excerpt, reproduction, or transcription by any authorized representative of the Owner, the Federal Aviation Administration (FAA), the Arizona Department of Transportation (ADOT), the Office of Inspector General, or the Comptroller General of the United States. Contractors and subcontractors' books, records, correspondence, accounting procedures and practices, and

Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause, including liquidated damages assessed for Contractor'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 Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under this Article 14.

14.3.5 Remedy Limited to Damages. In the event that Contractor is terminated, whether for cause or convenience, the Contractor's sole remedy shall be for damages. In no event shall the Contractor 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 CMAR CONTRACT

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