



Terminal Concessions Remodel

CONSTRUCTION MANAGER AT RISK (CMAR) CONSTRUCTION SERVICES CONTRACT

PROJECT NO. 1086

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
ARTICLE 1 – PARTICIPANTS AND PROJECT	3
ARTICLE 2 – CONTRACT DOCUMENTS	4
ARTICLE 3 – PRE-CONSTRUCTION SERVICES	4
ARTICLE 4 – CONSTRUCTION SERVICES	4
ARTICLE 5 – OWNER RESPONSIBILITIES	6
ARTICLE 6 – CONTRACT TIME.....	7
ARTICLE 7 – CONTRACT PRICE.....	8
ARTICLE 8 – PAYMENT	9
ARTICLE 9 – CHANGES TO THE CONTRACT	9
ARTICLE 10 – SUSPENSION AND TERMINATION	10
ARTICLE 11 – INSURANCE AND BONDS.....	10
ARTICLE 12 – INDEMNIFICATION	10
ARTICLE 13 – DISPUTE RESOLUTION.....	10
ARTICLE 14 – MISCELLANEOUS PROVISIONS	10
EXHIBIT A – ACCEPTED GMP/PRICE PROPOSAL & PROJECT SCHEDULE.....	12
EXHIBIT B – COMPLIANCE WITH SPECIFIC GOVERNMENT PROVISIONS.....	13
EXHIBIT C – PROJECT SPECIFIC CONDITIONS & PROJECT PLANS AND SPECIFICATIONS.....	16
EXHIBIT D – REQUIRED FORMS	17
EXHIBIT E – DEFINITIONS.....	27
EXHIBIT F - COMPLIANCE WITH OWNER’S PUBLISHED RULES AND REGULATIONS AND MINIMUM STANDARDS, AS AMENDED FROM TIME TO TIME	29

Phoenix Mesa Gateway Airport Authority

Construction Manager at Risk Construction Services Project No.: 1086

THIS CONTRACT is made and entered into 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", and shall be effective as of this ____ day of _____, 20__.

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:

Telephone:

Fax:

E-mail:

CMAR: [name], a(n) [type]

Address

City ST Zip

Arizona ROC No.:

Federal Tax ID No.: _____

CMAR Representative:

Telephone:

Fax:

E-mail:

DESIGN PROFESSIONAL: **Name:**

Address:

Design Professional:

Telephone:

Fax:

E-mail:

PROJECT DESCRIPTION:

Insert description

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 SOQ requirements, documents CMAR's submittal (2019-020-RFQ)
3. General Conditions
4. General Provisions
5. Special Provisions
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 C, 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 C.

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 11, 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

ARTICLE 6 – CONTRACT TIME

Contract Duration is **XXX calendar days or a fixed date with a Final Completion no later than MM/DD/YR.**

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:

\$x,xxx 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 \$ **XXXXXXXXXX**. 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 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 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.

Executed as of the Effective Date.

CMAR

COMPANY NAME, a(n)

By: _____

Name: _____

Title: _____

Date: _____

OWNER

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

By: _____

Name: J. Brian O'Neill, A.A.E.

Title: Executive Director/CEO

Date: _____

DRAFT

EXHIBIT A – ACCEPTED GMP/PRICE PROPOSAL & 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 – COMPLIANCE WITH SPECIFIC GOVERNMENT PROVISIONS

CIVIL RIGHTS - GENERAL

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCES

TITLE VI COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the owner or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the owner or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the owner will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the owner or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the owner to enter into

any litigation to protect the interests of the owner. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This contract and all subcontracts that result from this contract incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This contract and all subcontracts that result from this contract incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

DRAFT

EXHIBIT C – 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 D – 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. 2019-020-RFQ; CMAR for Terminal Concessions Remodel (Authority Project No. 1086)**, 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. 2019-020-RFQ; CMAR for Terminal Concessions Remodel (Authority Project No. 1086)**, 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 for Terminal Concessions Remodel (Authority Project No. 1086)
Authority Solicitation No. 2019-020-RFQ

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)

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 for Terminal Concessions Remodel****Authority Project No. 1086****Authority Solicitation No. 2019-020-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 February 11, 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 for Terminal Concessions Remodel
Authority Project No. 1086
Authority Solicitation No. 2019-020-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 for Terminal Concessions Remodel**

CHANGE ORDER NO: _ _

Authority Project No. 1086
Authority Solicitation No. 2019-020-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],
By _____ Date _____
It's _____

Owner
By _____ Date _____
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 for Terminal Concessions Remodel, Authority Project No. 1086**, 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 E – 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.

DRAFT

EXHIBIT F - COMPLIANCE WITH 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=yCr72rLUX2](http://www.gatewayairport.com/documents/documentlibrary/board%20policies/rules%20and%20regulations%2016-53.pdf?Uniqueifier=yCr72rLUX2)

2. Minimum Standards (link)

<http://www.gatewayairport.com/documents/documentlibrary/board%20policies/airport%20minimum%20standards.pdf?Uniqueifier=yCr72rLUX2>

DRAFT