

in privity of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in connection with, or in any way association with, such change.

7.2 CHANGE DIRECTIVE.

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

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

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

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

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

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

7.3 MINOR CHANGES IN THE WORK.

The Architect will have authority to order minor changes in the work not involving adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract. Such

changes shall be effected by written order issued through the Architect, and shall be binding on the CMAR. The CMAR shall carry out such written orders promptly.

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ARTICLE 8 TIME

8.1 PROGRESS AND COMPLETION.

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

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

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

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

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

8.2 DELAYS AND EXTENSIONS OF TIME.

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 SCHEDULE OF VALUES.

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

9.2 APPLICATIONS FOR PAYMENT.

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

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

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

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

9.2.6 Payment for Stored Materials. Unless otherwise provided in the Contract, payments shall be made on account of materials delivered and suitably stored at the Site for subsequent incorporation in the work. Payment will not be made for materials and equipment suitably stored off the Site.

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

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

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

9.3 RECOMMENDATION FOR PAYMENT.

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

9.3.2 Recommendation Subject to Later Evaluation. The recommendation of the Architect and the decision of the Owner to make a payment is subject to later evaluation of the work for

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

9.4 DECISIONS TO WITHHOLD RECOMMENDATION.

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

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

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

9.5 PAYMENTS TO SUBCONTRACTORS.

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

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

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

9.6 INTEREST.

If any payment to the CMAR is delayed after the date due, the Owner shall pay interest at the rate of 1% per month or fraction of a month on such unpaid balance as may be due, provided however, that such 1% charge shall not apply to any disputed portion of an Application for Payment. If any periodic or Final Payment to a Subcontractor is delayed by more than (7) seven days after receipt of the periodic or Final Payment by the CMAR or Subcontractor, the CMAR or Subcontractor shall pay interest to his Subcontractor or material supplier, beginning on the eighth day, at the rate of 1% per month or a fraction of a month on such unpaid balance as may be due.

9.7 FAILURE OF PAYMENT.

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

9.8 SUBSTANTIAL COMPLETION.

9.8.1 Defined. Substantial completion is the stage in the progress of the work when all of the work is complete in accordance with the Contract Documents so the Owner can occupy or utilize the project for its intended use. For the project and each construction phase to be substantially complete, the following items must be completed in accordance with the Contract Documents: **all new Work identified in the Contract Documents shall be complete and operational leaving only items identified on the final punchlist outstanding.** The project area must be open and fully operational for airport and aircraft operations use as intended and shown in the plans. The purpose of granting or acknowledging substantial completion is to stop Contract time. Granting of substantial completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply. The date

of substantial completion shall be the date the Architect receives, in writing, notification from the CMAR, that the work is substantially complete. If upon inspection the project Architect determines that the project is not substantially complete and/or not ready for inspection, the date of notification from the CMAR will become void. In the event that the Architect grants substantial completion, the CMAR shall have thirty (30) calendar days thereafter to complete punch list work, unless the Architect grants additional time in writing. In no case shall a CMAR be granted more than thirty (30) calendar days to complete punch list work, unless there are extenuating circumstances such as a labor strike or circumstance beyond the CMAR's control that would necessitate a further time extension.

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

9.8.2 Certificate of Substantial Completion. When the CMAR considers that all of the work that the Owner agrees to accept as substantially complete, the CMAR shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The CMAR shall, within 30 calendar days, complete and correct all items on the list, unless the Owner in writing grants a longer time. Failure to include an item on such list does not alter the responsibility of the CMAR to complete all work in accordance with the Contract. Upon receipt of the list, the Architect will make an inspection to determine whether the work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract, the CMAR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The CMAR shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the work or designated portion thereof is substantially complete, the Architect will prepare a certificate which shall (1) establish the date of Substantial Completion, and (2) shall fix the time within which the CMAR shall finish all items on the list accompanying the Certificate ("Certificate of Substantial Completion"). The Certificate of Substantial Completion shall be submitted to the Owner and CMAR for their written acceptance of responsibilities assigned to them in such Certificate.

9.9 FINAL COMPLETION AND FINAL PAYMENT.

9.9.1 Final Inspection/Request for Punch List. Following the issuance of a Certificate of Substantial Completion for the work and upon completion of the work, the CMAR shall forward to the Architect a written notice that the work is ready for final inspection and acceptance and shall also forward to the Architect a final Application for Payment. Upon receipt, the Architect will promptly make such

inspection. When the Architect, upon consultation with the Owner, finds the work acceptable under the Contract and the Contract fully performed, the Architect will promptly issue a final recommendation stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the work has been completed in accordance with the Contract and that the remaining Contract Sum is due, including all retainage, less authorized deductions.

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

9.9.3 Delay of Final Completion. If, after Substantial Completion of the work, Final Completion thereof is materially delayed through no fault of the CMAR or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the CMAR and recommendation by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. In such case, the Owner will retain at least two times the value of the incomplete or uncorrected parts of the work, as determined by the Owner in consultation with the Architect. If the remaining balance for work not fully completed or corrected is less than retainage stipulated in the Contract the written consent of Surety to payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the CMAR to the Architect prior to recommendation of such payment. Such payment shall be made under terms and conditions governing Final Payment.

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

9.10 INSPECTION BY ARCHITECT.

The Architect will make up to two inspections of the work for the purpose of determining Substantial Completion and up to two inspections of the work for the purpose of determining Final Completion. If, after making either of such inspections, the Architect determines that the work is

not substantially complete or finally complete (as the case may be), the CMAR shall be responsible for the costs of the Architect incurred in the performance of additional inspections for the purpose of determining Substantial Completion or Final Completion (as the case may be).

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS.

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

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

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

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

10.2 SAFETY OF PERSONS AND PROPERTY.

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

- .1 employees on the work and other persons who may be affected thereby;

- .2 the work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the CMAR or the CMAR's Subcontractors;
- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, Taxiways, Runways, Aprons, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

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

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

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

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

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

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

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

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

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

10.3 EMERGENCIES.

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

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ARTICLE 11 INSURANCE

11.1 CMAR-PROVIDED INSURANCE.

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

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

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

11.1.1.3 Business Automobile Liability. Business Automobile Liability insurance, with a combined single limit no less than \$5,000,000 combined single limit per accident for Bodily Injury and Property Damage with respect to all vehicles used in performance of the work on or off the Site, whether owned, non-owned, leased, hired, assigned, or borrowed.

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

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

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

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

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

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

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

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

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

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

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

11.1.11 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, Owner. At the option of Owner, either: the CMAR shall reduce or eliminate such deductibles; or the CMAR shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

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

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

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

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

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

11.2 PERFORMANCE AND PAYMENT BONDS.

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK.

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

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

12.2 CORRECTION OF WORK.

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

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

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

12.2.4 Owner's Right to Correct Nonconforming Work. If the CMAR fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. If the CMAR does not proceed with correction of such nonconforming work within a reasonable time fixed by written notice from the Owner or the Architect, the Owner may remove it and store the salvable materials or equipment at the CMAR's expense. If the CMAR does not pay costs of such removal and storage within ten (10) days thereafter, the Owner may sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting the costs that should have been borne by the CMAR, including compensation for the

Architect's additional services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the CMAR should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall pay the difference to the Owner.

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

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

12.3 ACCEPTANCE OF NONCONFORMING WORK.

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW.

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

13.2 SUCCESSORS AND ASSIGNS.

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

13.3 THIRD PARTY BENEFICIARY.

This Contract is not intended to benefit any third party.

13.4 NOTICES.

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

Architect

Name
Address
City ST Zip
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:

CMAR:

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

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

13.5 RIGHTS AND REMEDIES.

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

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

13.6 TESTS AND INSPECTIONS.

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

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

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

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

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

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

13.15 ENERGY CONSERVATION AND POLICY ACT COMPLIANCE.

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE OWNER FOR CAUSE.

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

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

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

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

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

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

14.2 SUSPENSION BY THE OWNER FOR CONVENIENCE.

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

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

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

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

14.3 OWNER'S TERMINATION FOR CONVENIENCE.

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

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

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

- .1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the work;
- .2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the CMAR in performing the Contract; and

.3 Payment of profit, in so far as profit is realized hereunder, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of completion of the work. In no event shall the CMAR be entitled to anticipated fees or profits on work not required to be performed.

14.3.3 Warranties, Guarantees and Indemnified Parties to Remain in Effect. All obligations of the CMAR under the Contract with respect to completion of the work, including but not limited to all warranties, guarantees and indemnities, shall apply to all work completed or substantially completed by the CMAR prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the CMAR shall be without prejudice to any claims or legal remedies that the Owner may have against the CMAR for any cause, including liquidated damages assessed for CMAR's delays to any work Milestone Dates.

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

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

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

END GENERAL CONDITIONS TO THE CMAR CONTRACT