

# **DIVISION I**



## **TAXIWAY GOLF REALIGNMENT/RECONSTRUCTION Phase 1**

### **CONSTRUCTION MANAGER AT RISK (CMAR) PRE-CONSTRUCTION SERVICES CONTRACT**

**PROJECT NO. 1092**

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## Mesa Gateway Airport

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### **Construction Manager at Risk Pre-Construction Services Project No. 1092**

**THIS CONTRACT** is made and entered into by and between the Mesa Gateway Airport Authority, formerly known as the Mesa Gateway Airport Authority, a joint powers airport authority, authorized by the state of Arizona, hereinafter called ("MGAA"), and the "Construction Manager at Risk" or "CMAR" designated below. Individually, each is a "Party" and collectively, the "Parties" shall be effective as of the date signed by Owner.

MGAA and CMAR agree as follows:

### **ARTICLE 1 – PARTICIPANTS AND PROJECT**

**MGAA:** Mesa Gateway Airport Authority  
Project Manager: Rich Adams  
Telephone: 480-988-7655  
Fax: 480-988-2315  
E-mail: radams@gatewayairport.com

**CMAR:** **TBD**

**PROJECT DESCRIPTION:** Realignment/Reconstruction of Taxiway Golf, Phase 1

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

### **ARTICLE 2 – CONTRACT DOCUMENTS**

#### **2.1 CONTRACT DOCUMENTS**

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

1. This Contract and all of its Exhibits herein;

2. The General Conditions to the CMAR Construction Contract;
3. Federal Contract Provisions;
4. The Statement of Qualifications (SOQ) requirements (2026-005-RFQ), documents and attachments, and CMAR's submittal dated TBD.

## 2.2 DEFINITIONS

Whenever the following terms are used in this Contract, the intent and meaning shall be interpreted as follows:

**Allowance** – A specific amount for a specific item of Work, if any, that MGAA agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of MGAA) at the time the Contract Price is agreed to for CMAR to provide a definitive price. Allowances shall be treated in accordance with Article 14 of this Contract.

**Baseline Cost Model** – A breakdown and estimate of the scope of the Project developed by CMAR pursuant to Article 3.4.1 of this contract.

**CMAR or Construction Manager at Risk** – The person or firm selected by MGAA to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with MGAA. The term "CMAR" includes CMAR under both Pre-Construction and Construction Services Contracts.

**CMAR Fee or CMAR's Fee** – An agreed-upon percentage in an accepted GMP that represents the CMAR's fee for performance of the Work.

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

**Contract Price** – Where compensation under the Contract is based upon a GMP accepted by MGAA, 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 CMAR in the proper, timely, and complete performance of the Work. The Cost of the Work shall include only those costs set forth in Exhibit A of this Contract.

**Deliverables** – The work products prepared by CMAR in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by CMAR during pre-construction may include but are limited to: the Baseline Cost Model and Schedule that validate MGAA'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 MGAA 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 MGAA and a Construction Contract is entered

into between MGAA and CMAR, the duties, obligations, and warranties of the CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting Construction Contract.

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

**Detailed Project Schedule** – The Detailed Project Schedule was developed by the CMAR for the review and approval of the Project Manager in accordance with Article 3.2 of this contract, if applicable.

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

**GMP Proposal** – The proposal of CMAR submitted pursuant to Article 3.6 of this contract 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, Change Order, or Job Order if applicable.

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

### **3.1 GENERAL REQUIREMENTS**

3.1.1 CMAR has been selected to perform the Services herein, in part, because of the skills and expertise of the key firms, team members, and individuals (collectively, “CMAR’s Key Personnel”) that are listed in Exhibit D and that are consistent with CMAR’s submitted Statement of Qualifications (SOQ) dated TBD. CMAR shall perform the Services under this Contract using CMAR’s Key Personnel. CMAR’s Key Personnel shall not be removed or replaced during the term of the Contract without prior written consent of MGAA. MGAA recognizes that CMAR’s Key Personnel may leave the employ of CMAR for reasons beyond CMAR’s control. Whenever practicable, CMAR shall give MGAA at least 14 calendar days’ notice prior to the departure of any of CMAR’s Key Personnel from the Project. MGAA shall have the right to approve or reject any replacements for CMAR’s Key Personnel when personnel leave that are beyond the control of the CMAR. When within CMAR’s control, CMAR’s failure to use CMAR’s Key Personnel to perform the Services under the Contract without MGAA’s prior written consent will be a material breach and grounds for suspension or termination for cause of this Contract by MGAA.

Without limitation of the foregoing, in the event CMAR removes any Key Personnel without the consent of MGAA, which shall not unreasonably be withheld, CMAR shall deduct and/or reimburse all costs and expenses charged to MGAA, whether included in CMAR’s general conditions or otherwise, and including any markups thereon, for any replacement personnel who are not approved by MGAA. Notwithstanding any provisions herein to the contrary, MGAA shall have audit rights to CMAR’s records with respect to verifying such costs, expenses, and markups for purposes of deduction and/or reimbursement.

3.1.2 CMAR will comply with all terms and conditions of the General Conditions to the CMAR Construction Contract.

3.1.3 In the event of a conflict between this Contract and the General Conditions or any exhibit hereto or appendix thereto, the terms of this Contract shall control.

- 3.1.4 CMAR shall prepare and present to MGAA a Detailed Project Schedule that is acceptable to MGAA and in accordance with Article 3.2 of this Contract.
- 3.1.5 CMAR shall conduct the evaluations, perform the design document reviews, and make the recommendations and provide the other Services referenced and in accordance with Article 3.3 of this Contract.
- 3.1.6 CMAR shall prepare and submit the Baseline Cost Model, Detailed Cost Estimates, and Schedule of Values in accordance with Article 3.4 of this Contract.
- 3.1.7 The submitted Baseline Cost Model, Detailed Cost Estimates, and Schedule of Values shall not exceed MGAA's Construction Budget, which is TBD. If CMAR submits a Baseline Cost Model, Detailed Cost Estimates, and Schedule of Values that exceed the Construction Budget, negotiations could lead to termination or suspension of the Contract.
- 3.1.8 CMAR shall perform the Services required by, and in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices
- 3.1.9 As a participating member of the Project Team, CMAR shall provide to MGAA and Design Professional a written evaluation of MGAA's Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR shall prepare a Baseline Cost Model that validates MGAA's budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost model for variances. MGAA and Design Professional will provide all the reasonably required data that is available in order to reach an agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.
- 3.1.10 CMAR shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings, and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of the CMAR Contract for default.
- 3.1.11 CMAR, when requested by MGAA, shall attend, make presentations, and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR shall provide drawings, schedule diagrams, budget charges, and other materials describing the Project when their use is required or appropriate in any such public agency meetings.
- 3.1.12 MGAA ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, is to be and remain the property of MGAA. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings, and other information or material, 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 MGAA. The rights in this Section are exclusive to MGAA in perpetuity.

- 3.1.13 CMAR represents to MGAA in completing Pre-Construction Services and providing the reports and analysis required thereunder, that the Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR does not assume any design responsibilities unless specifically called for in the scope of work, but CMAR shall be responsible for its errors, omissions, or inconsistencies included in the Work.
- 3.1.14 CMAR and MGAA agree and understand that MGAA is at all times subordinate 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*).

## 3.2 DETAILED PROJECT SCHEDULE

- 3.2.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all members’ compliance with the schedule requirements of the Project. Each Project Team member is responsible for their compliance with the Detailed Project Schedule requirements. CMAR shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path method (“CPM”) technique, unless required otherwise, in writing by MGAA. CMAR shall use scheduling software acceptable to MGAA to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate milestone dates for the phases once determined. As part of the construction phase, MGAA may require CMAR to prepare a “resource-loaded” schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/anticipated number of personnel per day for each task. CMAR shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.
- 3.2.2 CMAR shall include and integrate in the Detailed Project Schedule the services and activities required of MGAA, Design Professional, and CMAR, including all construction phase activities based on the input received from MGAA and the Design Professional. The Detailed Project Schedule shall define activities as determined by MGAA to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by MGAA. The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by MGAA, relationships between the activities, MGAA’s occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Completion.
- 3.2.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR shall update and maintain a detailed

Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team whenever required, but no less often than at the Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

- 3.2.4 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and MGAA and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.
- 3.2.5 Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR shall identify all long lead time materials, fabrications, equipment, or other items that may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule.
- 3.2.6 Equipment Plan. CMAR shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to MGAA and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

### 3.3 DESIGN DOCUMENT REVIEWS

- 3.3.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design, and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.
- 3.3.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by MGAA, and copies of the reports will be provided to CMAR.
- 3.3.3 CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through pre-construction. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment, and building systems, and labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications.

CMAR shall use established value analysis principles in recommending cost-effective alternatives.

- 3.3.4 CMAR shall routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, completeness, and coordination of Work of Subcontractors and Suppliers.
- 3.3.5 CMAR shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design is prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing MGA operations, security and systems and maintains traffic on adjacent roadways. CMAR shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed and shall promptly inform the Project Team of any issues.
- 3.3.6 CMAR shall check cross-reference and complementary Drawings and sections within the Specifications and, in general, evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well, or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.
- 3.3.7 The results of the reviews shall be provided to the Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications, with notations and recommendations made on the Drawings, Specifications, and other documents. CMAR shall meet with the Project Team to discuss any findings and review reports.
- 3.3.8 CMAR's reviews shall be from a CMAR's perspective, and though it shall serve to eliminate/reduce the number of RFI's and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.
- 3.3.9 It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with Applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, sound engineering principle's rules, and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those laws, statutes, ordinances, building codes, rules, and regulations.
- 3.3.10 The Project Team shall routinely identify and evaluate using value analysis principles and alternate systems, approaches, and design changes that have the potential to reduce Project costs while still delivering a high-quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR, in cooperation with the Design Professional, will perform a cost/benefit analysis of the alternatives and submit such in

writing to the Project Team. MGAA, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CMAR-suggested alternatives into the Drawings and Specifications. CMAR shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and MGAA's approval prior to the establishment of the GMP.

### 3.4 **BASELINE COSTS MODEL, DETAILED COST ESTIMATES, AND SCHEDULE OF VALUES**

- 3.4.1 At the conclusion of the Schematic and Programming, CMAR will review all available information regarding the design and scope of the Project using CMAR's experience in performing similar work, knowledge of similar projects, and current and projected construction costs, and, based upon that review, shall develop a Baseline Cost Model for review by the Project Team and approval by MGAA. Once approved by MGAA, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout Pre-Construction until the final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by MGAA prior to the start of construction. It is the responsibility of CMAR to ensure MGAA has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction, so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CMAR of what the complete functional Project's construction costs will be, as indicated by the most current available documents, and will be constantly checked against the Baseline Cost Model. CMAR shall communicate to the Project Team and assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by MGAA.
- 3.4.2 After receipt of the Design Professional's most current documents from certain specified pre-construction milestones, CMAR shall provide a draft Detailed Cost Estimate, including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CMAR will reconcile any disagreements on the estimate to arrive at an agreed-upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction milestone. Pre-Construction milestones applicable to this paragraph are: 60% Construction Drawings and 95% Construction Drawings. If no consensus is reached, MGAA will make the final determination. If the Project Team requires additional updates to the Detailed Cost Estimate beyond those specified in this paragraph, CMAR shall provide the requested information in a timely manner.
- 3.4.3 If at any point the Detailed Cost Estimate submitted to MGAA exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Article 3.4.2 above, CMAR shall make appropriate recommendations to project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.
- 3.4.4 Unless other levels of completion are agreed to in writing in the Construction Documents, at 60% Construction Drawings and 95% Construction Drawings, and included with the associated report, CMAR shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices

and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents.

- 3.4.5 CMAR is to track, estimate, price, and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate, such as: MGAA-generated changes, Project Team proposed changes, alternate system analysis, constructability items, and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model, 40% Construction "Drawings, 90% Construction Documents, 100% Construction Documents, and the bid packages for all Phases, if applicable.
- 3.4.6 Upon request by MGAA, CMAR shall submit to MGAA a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by MGAA and based on information provided by MGAA, CMAR shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist MGAA in the financing process.

### 3.5 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 3.5.1 Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CMAR. In any case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of a Subcontractors/Suppliers, to the extent applicable. CMAR shall comply with its Subcontractor Selection Plan submitted with its Statement of Qualifications.
- 3.5.2 MGAA may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed, after such a qualifications-based selection, for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by MGAA.
- 3.5.2.1 Qualifications-based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal, and in such a way as not to delay the start date of the Construction phase as defined in the Baseline Project Schedule.
- 3.5.2.2 If a Subcontractor/Supplier selection plan was submitted and agreed to by MGAA, CMAR shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide MGAA with its review and recommendations.
- 3.5.2.3 CMAR must receive written MGAA approval for each selected Subcontractor(s) and Supplier(s).
- 3.5.2.4 CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 3.5.3 All Work shall be competitively bid, unless a Subcontractor or Supplier was selected pursuant to paragraph 3.5.2 above, and in accordance with all DBE requirements as provided for in the Owners RFQ, the General Conditions, and the Federal Contract Provisions.

- 3.5.3.1 CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by MGAA, and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by MGAA to submit less than three names.  
Without prior written notice to MGAA, no change in the recommended Subcontractors/Supplies shall be allowed.
- 3.5.3.2 If MGAA objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to MGAA.
- 3.5.3.3 CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a Pre-Bid Conference with prospective Subcontractors and Suppliers.
- 3.5.3.4 If CMAR desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and MGAA concurs that it is necessary in order to ensure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or rebidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by MGAA.
- 3.5.3.5 CMAR shall receive, open, record, and evaluate the bids; provided, however, that if CMAR or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids shall be received, opened, recorded, and evaluated by the Project Manager instead of CMAR. Bids for each category of Work shall be opened and recorded at a pre-determined time. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids shall be done with the Project Manager in attendance to observe and witness the process. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of Work.
- 3.5.4 CMAR shall be required to prepare two different reports on the subcontracting process.
- 3.5.4.1 Within fifteen days after each major Subcontractor/Supplier bid opening process, CMAR shall prepare a report for MGAA's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each sub-agreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CMAR intends to self-perform, if any.
- 3.5.4.2 Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to MGAA of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to

determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

- 3.5.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.
- 3.5.6 If, after receipt of sub-bids or after award to Subcontractors and Suppliers, MGAA objects to any nominated Subcontractor/Supplier or to any self-performed Work based upon any reasonable basis, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by MGAA, CMAR's proposed GMP for the Work or portion thereof shall be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

### 3.6 GMP PROPOSAL

- 3.6.1 CMAR shall submit a GMP Proposal for the entire Work, and for each phase (if required) of the Work, at the times set forth in the Pre-Construction Schedule included in the attached Exhibit A. The GMP Proposal shall be presented in a format acceptable to MGAA based upon the attached Exhibit B. MGAA may change the schedule, format, and/or requirements for the GMP Proposal as it deems necessary during Pre-Construction and may request resubmittal of the GMP Proposal to reflect such changes.
- 3.6.2 For the purpose of the GMP Proposal, the parties agree that:
1. The CMAR Fee shall be equal to TBD% (percent) of the Direct Costs;
  2. General Conditions costs shall be a fixed amount or percentage agreed to as part of the Baseline Cost Model.
- 3.6.3 The GMP Proposal shall not exceed MGAA's budget for the construction of the Project, which is \$TBD ("Construction Budget").
- 3.6.4 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work in each phase of the Work that is being proposed, plus the current estimate for all other Work. MGAA will not approve the GMP for the phase of work without a total estimate for the complete Project. MGAA may request a GMP Proposal for all or any portion of the Project and at any time during pre-construction. Any GMP Proposals submitted by CMAR shall be based on and consistent with the Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 3.6.5 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CMAR Fee, and General Conditions Cost. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CMAR shall be responsible for any costs for expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.
- 3.6.6 CMAR shall prepare its GMP Proposal in accordance with MGAA's request for GMP Proposal requirements based on the most current completed Drawings and Specifications at that time, which, unless otherwise directed by MGAA in writing, shall be at 95% Construction Drawings. CMAR shall mark the face of each document of each set upon which its GMP Proposal is based. These documents shall be identified as the GMP Plans and Specifications. CMAR shall send one set of those documents to the Project Manager, keep one set, and return the third set to the Design Professional.

3.6.7 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any GMP Proposal(s), all of which shall reflect the GMP Plans and Specifications. The Detailed Project Schedule shall be shown in relation to the Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Article 3.1.2 through 3.2.5 of this contract.

3.6.8 GMP Proposals(s) Review and Approval

3.6.8.1 CMAR shall meet with the Project Team to review the GMP Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal.

3.6.8.2 If, during the review and negotiation of GMP Proposals, design changes are required, MGAA may authorize and cause the Design Professional to revise the GMP Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised GMP Plans and Specifications will be furnished to CMAR. CMAR shall promptly notify the Project Team in writing if any such revised GMP Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

3.6.9 All portions of or items comprising the GMP Proposal are subject to audit by MGAA, as deemed appropriate by MGAA, including, without limitation, any based upon unit prices or Work to be self-performed by CMAR, or its affiliates.

3.7 PAYMENT PROCEDURE FOR PRE-CONSTRUCTION SERVICES

3.7.1 Requests for monthly payments by CMAR for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices, and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

3.7.2 In no event will MGAA pay more than seventy-five (75%) of the Contract Price until final acceptance of ALL Pre-Construction Services, and award of the final approved Construction Services Contract for the entire Project by MGAA Council. If CMAR does not prepare a GMP Proposal that is acceptable to MGAA, or the GMP Proposal exceeds MGAA's Construction Budget, then CMAR understands and acknowledges that it will forfeit any right to receive 25% of the Contract Price being retained by MGAA.

3.7.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of MGAA during the progress of any portion of Pre-Construction Services specified in this Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period and may be mutually agreed upon between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of MGAA of any of their respective legal rights herein.

- 3.7.4 No compensation to CMAR shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.
- 3.7.5 If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

### 3.8 ADDITIONAL PRE-CONSTRUCTION SERVICES

- 3.8.1 Additional services which are outside the scope of the services required under the Contract Documents shall not be performed by CMAR without prior written Authorization from MGAA. Additional services, when authorized by an executed written Change Order by MGAA, shall be compensated for by a fee mutually agreed upon in such Written Change Order between MGAA and CMAR.
- 3.8.2 No claim for additional services, extra work done, or materials furnished by CMAR shall Be allowed by MGAA except as provided herein, nor shall CMAR provide any additional services, do any work, or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing by the Project Manager. Work or material(s) furnished by CMAR without such prior written authorization shall be CMAR's sole jeopardy, cost, and expense, and CMAR hereby agrees that without prior written authorization, no claim for compensation for such services, work, or materials furnished shall be made, and MGAA shall not be responsible for such costs.
- 3.8.3 No Work may be performed under this Pre-construction Services Contract without prior written approval by MGAA. As an example, all procurement of long lead time items that must be procured to support the construction schedule or site investigative Work necessary to complete Pre-Construction Services, if done by the CMAR, will be performed only after the long lead time items or investigative Work has been approved and accepted in writing by MGAA and all such Work shall be done only under an executed Contract for Construction Services, or pursuant to a prior written direction from MGAA to engage in such procurement..

### 3.9 SURVIVAL OF THE DESIGN SERVICES CONTRACT, DUTIES, OBLIGATIONS, AND WARRANTIES

- 3.9.1 If the GMP Proposal is accepted by MGAA and a Construction Contract is entered into between MGAA and CMAR, the duties, obligations, and warranties of CMAR under the Pre-Construction Services Contract survives and is incorporated into the resulting Construction Contract.

## **ARTICLE 4 – CONSTRUCTION SERVICES**

- 4.1 If MGAA accepts CMAR's GMP Proposal, CMAR and MGAA may enter into a Construction Services Contract for Construction of the Project based upon CMAR's Pre-Construction Services performed and GMP Proposal and detailed Project Schedule submitted pursuant to this Contract. The terms of the Construction Services Contract are being negotiated contemporaneously with this Contract, and CMAR agrees to execute the Construction Services Contract, without further modification, upon acceptance by MGAA of the GMP Proposal. All of CMAR's obligations, duties, and warranties in relation to Pre-Construction Services and Deliverables (including specifically the GMP Proposal) survive the completion of this Contract and will be incorporated into the Construction Services Contract.

**ARTICLE 5 – MGAA FURNISHED INFORMATION****5.1 MGAA, AT NO COST TO CMAR, WILL FURNISH THE FOLLOWING TO CMAR:**

- 5.1.1 One copy of data in MGAA's possession or control which MGAA determines in its discretion to be pertinent to the Work. However, CMAR shall be responsible for searching the records and requesting information it deems reasonably required for the Project.
- 5.1.2 Electronic copies of programs, reports, drawings, and specifications reasonably required by CMAR, to the extent in the possession of MGAA.
- 5.1.3 Additional information to be provided by MGAA, if any, is listed below:

**ARTICLE 6 – CONTRACT TIME****6.1 Contract Duration is TBD Calendar Days.**

- 6.1.1 The Pre-Construction Services described in this Contract shall be performed by CMAR in accordance with the Pre-Construction Schedule set forth in attached Exhibit A. Failure on the part of CMAR to adhere to the Pre-Construction Schedule requirements for activities for which it is responsible and in control will be deemed a material breach and sufficient grounds for termination for cause of this Contract by MGAA.

**ARTICLE 7 – CONTRACT PRICE**

- 7.1 In exchange for CMAR's full, timely, and acceptable performance of the Services under this Contract, and subject to all of the terms of this Contract, MGAA will pay CMAR a not-to-exceed price of \$TBD (the "Contract Price"). The method of payment for this contract is Hourly, Not-to-Exceed. The amount paid shall not exceed the amount listed in Article 7.1 for actual costs incurred, based on the negotiated hourly rates and reimbursement schedule as defined in Exhibit A.
- 7.2 The Contract Price is all-inclusive, and MGAA shall not pay any additional amounts, costs expenses, except for only those specifically designated reimbursable costs, without markup, as set forth in Exhibit A.

**ARTICLE 8 – PAYMENTS**

- 8.1 The Contract Price shall be paid based upon the completion of tasks comprising the Pre-Construction Scope of Work as shown in Exhibit A.

**ARTICLE 9 – CHANGES**

- 9.1 MGAA reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate, and any such change as set forth in a written Change Order shall be deemed a part of this Contract as if originally incorporated herein.
- 9.2 If design changes are required, MGAA's and CMAR's responsibilities shall be in accordance with Article 3.6.8.2 of this Contract.

**ARTICLE 10 – SUSPENSION AND TERMINATION**

## 10.1 TERMINATION BY MGAA FOR CAUSE

10.1.1 Criteria for Termination for Cause. The Contractor shall be considered in default of his or her contract, and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons if the Contractor:

1. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
2. Fails to perform the work or fails to provide sufficient workers, equipment, and/or materials to assure completion of work in accordance with the terms of the contract, or
3. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
4. Discontinues the execution of the work, or
5. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
6. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
7. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
8. Makes an assignment for the benefit of creditors, or
9. Disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction, or
10. Breaches any provision of the contract, or
10. Violates any provision of the MGAA Rules and Regulations or Minimum Standards, as amended from time to time, and as incorporated into the Contract by reference (Exhibit C) or
12. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Engineer consider the Contractor in default of the contract for any reason above, the Engineer shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

10.1.2 Effect of Termination for Cause. When any of the above conditions exist, MGAA may, without prejudice to any other rights or remedies of MGAA and after giving the CMAR ten (10) days' written notice, terminate the Contract and may:

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, and
3. finish the work by whatever reasonable method MGAA may deem expedient.

10.1.3 CMAR Right to Receive Payment. When MGAA terminates the Contract for one of the reasons stated in Article 10.1.1, the CMAR shall not be entitled to receive further payment until the work is finished.

10.1.4 Costs for Finishing Work. If the unpaid balance of the Contract Sum exceeds costs of finishing the work, including compensation for the Design Professional 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 MGAA.

## 10.2 Not Used.

## 10.3 MGAA'S TERMINATION FOR CONVENIENCE.

10.3.1 **Effect of Termination for Convenience.** MGAA 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 MGAA 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 MGAA may direct for protection and preservation of the work relating to this Contract;
4. Deliver all plans, Drawings, Specifications, and other necessary information to MGAA; and
5. Complete performance of the work not terminated by the notice.

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

1. Reimbursement of all actual expenditures and costs approved by MGAA as having been made or incurred in performing the work;
2. Reimbursement of expenditures made and costs incurred with MGAA's prior written approval in settling or discharging outstanding commitments entered into by the CMAR in performing the Contract; and
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to the Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

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

10.3.4 **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 10, and the CMAR's remedy for such wrongful termination shall be limited to the recoveries specified under Article 10.3.2.

10.3.5 **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.

- 10.3.6 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.

## **ARTICLE 11 – INSURANCE**

- 11.1 For pre-construction services covered under this Contract, CMAR shall provide insurance in accordance with this Article 11.
- 11.2 CMAR shall provide proof of such insurance and all required endorsements in forms Acceptable to MGAA prior to commencing any Work or providing any Services under this Contract.
- 11.3 Failure to provide proof of insurance and the required endorsements acceptable to MGAA will be a material breach and grounds for termination for cause of this Contract by MGAA.
- 11.4 The CMAR and Subcontractors shall purchase from and maintain in a company or companies authorized to do business in Arizona 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 three (3) years thereafter.
- 11.5 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.
- 11.6 Commercial General Liability. Commercial General Liability insurance, with a combined single limit of \$2,000,000 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, CMARs' 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.
- 11.7 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.
- 11.8 Additional Insured. The policies required by Articles 11.6 and 11.7 herein shall be endorsed to include Mesa Gateway Airport Authority, their Design Professional, 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.
- 11.9 Waiver. CMAR and Subcontractors waive all rights of recovery against Mesa Gateway Airport Authority and the Design Professional, their directors, officers, employees, successors, and assigns,

and shall require its insurers to waive all rights of subrogation against Mesa Gateway Airport Authority and the Design Professional, and all of their respective directors, officers, employees, successors, and assigns.

- 11.10 CMAR to Provide Certificates of Insurance. Before commencing any work under this Contract, CMAR shall furnish MGAA with Certificates of Insurance issued by CMAR's and Subcontractors' insurer(s), as necessary, in a form acceptable to MGAA, as evidence that the insurance policies, including all applicable endorsements, providing the coverage, conditions, and limits required by this Article 11, are in full force and effect. MGAA has the right to request and receive promptly from the CMAR certified copies of any or all of such insurance policies and/or endorsements. MGAA 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, MGAA's right to insist on strict fulfillment of CMAR's obligations hereunder.
- 11.11 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. All such certificates, endorsements, and notices shall be sent to the following:
- |          |  |
|----------|--|
| MGAA:    | Mesa Gateway Airport Authority                       |
| Address: | 5835 South Sossaman Road<br>Mesa, Arizona 85212-6014 |
| Attn:    | Engineering and Facilities Director                  |
- 11.12 Costs of Insurance. Costs of all insurance coverage required by Article 11 are the sole responsibility of the CMAR.
- 11.13 Cancellation of Insurance. In the event any insurance coverage for the work is cancelled or terminated, CMAR agrees to replace the insurance without any lapse of protection to MGAA.
- 11.14 Contractual Obligations. The stipulation of insurance coverage in this Article 11 shall not be construed to limit, qualify, or waive any liabilities or obligations of CMAR, assumed or otherwise, under this Contract.
- 11.15 Notice of Loss. All physical loss or damage to the work or to MGAA property must be reported immediately to MGAA.
- 11.16 Higher Limits. If the CMAR maintains higher limits than the minimums stated in this Article 11, MGAA requires, and shall be entitled to, coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MGAA.
- 11.17 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, MGAA. At the option of MGAA, either: the CMAR shall reduce or eliminate such deductibles; or the CMAR shall provide a financial guarantee satisfactory to MGAA guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- 11.18 Claims Made Policy. No Claims Made policies will be accepted.
- 11.19 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 MGAA.

- 11.20 Subcontractors. CMAR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CMAR shall ensure that MGAA is an additional insured on insurance from subcontractors.
- 11.21 Special Risks or Circumstances. MGAA 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

## **ARTICLE 12 – INDEMNIFICATION**

- 12.1 To the fullest extent permitted by law, Design Professional or CMAR, its successors, assigns, and guarantors, shall indemnify and hold harmless MGAA, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Design Professional, CMAR, or other persons employed or used by Design Professional or CMAR in the performance of this Contract
- 12.2 If a court of law determines that this section is void under A.R.S. § 34-226 because a word, words, or phrase in this section makes this section void under A.R.S. § 34-226, then such word, words, or phrase (as applicable) shall be deemed to be stricken to the extent necessary so that this section is not void under A.R.S. § 34-226 and the remaining obligations shall remain in full force and effect; and the language of this section shall be retroactively reformed to the extent reasonably possible in such a manner so that the reformed language provides essentially the same rights and benefits to the fullest extent permitted by A.R.S. § 34-226(B).

## **ARTICLE 13 – DISPUTE RESOLUTION**

- 13.1 All disputes arising out of or relating to the Contract, the Work, or the Project shall be resolved pursuant to the Dispute Resolution process set forth in the General Conditions, Division II of the Contract Documents.
- 13.2 CMAR agrees that during any dispute between the parties, CMAR will continue to perform its obligations under the Contract until such dispute is resolved.
- 13.3 Notwithstanding any other provision in this Contract, MGAA has the right to immediately file in court and pursue an action for a temporary restraining order and/or injunctive relief against CMAR if MGAA determines that such action is necessary to protect its interests under the Contract, to obtain specific performance of any provision of the Contract, to advance the completion of the Project, or to protect health, welfare and/or safety, including without limitation, an action of an order directing CMAR to continue or return to construction the Work under the Contract.
- 13.4 MGAA and CMAR may adjudicate any dispute between them arising out of or relating to this Contract through alternative dispute resolution if they mutually agree. MGAA and CMAR shall include a similar alternative dispute resolution provision in all agreements with all other contractors, subcontractors, suppliers, and consultants retained for the Project, and they shall require these contractors, subcontractors, and suppliers to include similar alternative dispute resolution provisions in all contracts relating to the Project.

## **ARTICLE 14 – ALLOWANCES**

- 14.1 **UNLESS OTHERWISE PROVIDED IN THE CONTRACT DOCUMENTS:**
- 14.1.1 The CMAR shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by MGAA.

- 14.1.2 Whenever the costs are more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order.

## **ARTICLE 15 – DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

For pre-construction services covered under this Contract, CMAR is bound by the DBE requirements of the Contract Documents.

## **ARTICLE 16 – TITLE VI**

### **16.1 CIVIL RIGHTS ACT OF 1964, TITLE VI - GENERAL**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- 16.2 The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

### **16.3 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:

- 1. 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.
- 2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability 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.
- 3. 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.
- 4. 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 Sponsor 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 Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor 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.

**6. 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 Sponsor 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 Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **16.4 CIVIL RIGHTS –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 USC § 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 USC § 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 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (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 (42 USC § 12101, *et seq.*) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 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 (ensures nondiscrimination 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. 74087 (2005)];
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).
- A. The CMAR for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the CMAR will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to construction, in the event of breach of any of the above Non-discrimination covenants, MGAA will have the right to terminate the construction and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said construction had never been made or issued.

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

**CMAR**  
**TBD**

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

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

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

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

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

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

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

Title: Executive Director/CEO

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

**EXHIBIT A – PRE-CONSTRUCTION SERVICES SCOPE OF WORK AND SCHEDULE**

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

[insert]

**EXHIBIT B – SUBMITTAL REQUIREMENTS FOR GMP PROPOSAL**

1. Unless otherwise instructed, CMAR shall submit three (3) bound copies of any GMP Proposal(s) that include the following documents, comply with the requirements specified in this Contract, and follow the instructions. The GMP Proposal(s) shall be organized as follows:
  - A. Table of Contents
  - B. Project Description
  - C. GMP Proposal and the following attachments:
    - 1) Detailed Cost Estimate upon which the GMP is based, and if for phased work, a total project Detailed Cost Estimate as of the time of the phased GMP Proposal.
    - 2) List of Subcontractors
    - 3) Schedule of Manufacturers and Suppliers
  - D. Schedule of Values (“SOV”)
  - E. Project Schedule and a variance report to the Baseline Project Schedule
  - F. Construction phasing/traffic control (if applicable)
  - G. List of GMP Plans and Specifications
2. A summary breakdown of the GMP Proposal is shown on page 2 of this Exhibit, along with instructions regarding certain line items. The definitions included in Article 2.2 apply to the line items, as appropriate, and set forth the criteria to be used by CMAR in providing the requested breakdown.
3. The most current version of CMAR’s SOV shall be submitted with the GMP Proposal. Supporting documents for the SOV, including the request for bids, copies of bids received, and clarification assumptions used for the particular bid item listed, must be provided in an organized manner that correlates with the SOV.
4. The final accepted GMP shall not include any clarifications/assumptions made by CMAR in the preparation of the GMP Proposal, unless any such clarification or assumption is agreed to in writing by MGAA.
5. The most current version of CMAR’s Detailed Project Schedule shall be submitted with the GMP Proposal with a variance report from the project’s Baseline Schedule. The Detailed Project Schedule shall be prepared as specified in this Contract.
6. A table listing all drawing sheets included in the GMP Plans and Specification shall be included with the GMP package. The table shall include the following information: Sheet Number, Sheet Name, Sheet Version, and Date of Issuance. The GMP Proposal and Specifications, as defined, shall be transmitted as specified in this Contract.

**NOTE:** The submittal package must be kept as simple as possible, all on 8½x11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

**EXHIBIT C – COMPLIANCE WITH MGAA PUBLISHED RULES AND  
REGULATIONS AND MINIMUM STANDARDS**

CMAR agrees to comply with Mesa Gateway Airport Authority's published Rules and Regulations and Minimum Standards as amended from time to time.

1. Rules & Regulations (link)  
<https://www.gatewayairport.com/policiesdocumentsandforms>
  
2. Minimum Standards (link)  
<https://www.gatewayairport.com/policiesdocumentsandforms>

**EXHIBIT D – CMAR'S KEY PERSONNEL**

[Insert from SOQ]