

**Form of Agreement for (Construction Professional - Construction  
Manager as Constructor)  
Construction Manager as Constructor (CMR) and Related Services for  
Terminal Modernization Program  
at the Capital Region International Airport  
Between  
Capital Region Airport Authority  
and  
[Construction Professional]**

**Contract No.: 19-04\_\_\_\_**

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## CONSTRUCTION MANAGER AS CONSTRUCTOR (CMR) CONTRACT

This Construction Manager as Constructor (CMR) Contract ("Contract" or "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **Capital Region Airport Authority**, a public body corporate, with principal offices located at 4100 Capital City Blvd., 3<sup>rd</sup> Floor, Lansing, Michigan 48906 (hereinafter referred to as the "Airport Authority"), and \_\_\_\_\_ (hereinafter referred to as the "Construction Manager as Constructor" or "CMR"). All capitalized terms not defined herein shall have the meanings ascribed to them in Section 10 of the General Provisions. The Airport Authority and the Contractor may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

### BACKGROUND RECITALS

A. The Airport Authority has issued a RFQ on July 29, 2019 regarding the project known as the Terminal Modernization Program (the "Project") as supplemented and modified by the Addenda, if any, listed in **Exhibit CD** (the "RFQ").

B. The Airport Authority to implement the Project requires a construction professional hereinafter a Construction Manager as Advisor ("CMA") to which this Agreement shall be attached.

C. The CMR named above, being the successful Respondent of the RFQ, selected by the Airport Authority for Award of this Contract in accordance with Applicable Laws, desires to perform such construction services, and represents and warrants that it possesses the necessary professional and technical qualifications and capabilities to perform the same.

D. The Project over the course of a period of years shall consist of numerous projects which shall be let for bid. When the plans and specifications are at a certain level of completion, the Airport Authority shall then, at its option, give notice to the CMA that it is to become a CMR pursuant to the terms of this Contract.

E. This Contract specifically adopts the provisions of the RFQ issued on July 29, 2019 and any addendums thereto, except if there are any inconsistencies between the RFQ or addendums and this Contract, this Contract shall control.

F. This Contract specifically adopts the General Provisions and the Supplemental Terms and Conditions, except if there are any inconsistencies between the General Provisions or the Supplemental Terms and Conditions and this Contract, this Contract shall control.

In consideration of the mutual agreements and obligations of the Parties set forth below, the Airport Authority and the CMR hereby agree as follows:

### ARTICLE 1

#### WORK

##### 1.1 PROJECT; WORK

The Airport Authority is undertaking the Project which is to run for initially a period of five years with approximately a three year extension with specific contracts for construction to be let from

time to time for which the Airport Authority requires the services of a CMR to oversee the work for each let project which includes labor, materials, equipment, supervision, coordination, insurance, bonds, taxes, permits, mobilization, costs and other services necessary and appropriate for the construction of the Project (specific delineated projects). It is contemplated that the Work that the contract for the construction will be between the Airport Authority and the CMR who shall engage subcontractors and suppliers for the construction of the Project.

## **1.2 CONTRACT PRICE**

Airport Authority agrees to pay the CMR for the performance of all of the Work required under this Contract, and the CMR agrees to accept as full and only compensation therefore, such sum or sums of money as are specified in subsection 90-02 of the General Provisions, titled SCOPE OF PAYMENT, as such sum or sums may be adjusted pursuant to the procedures set forth in the Contract Documents.

## **1.3 CONTRACT TIME**

**1.3.1 *Substantial Completion and Final Completion.*** The CMR shall manage the subcontractors and suppliers to achieve Substantial Completion (as defined in the General Provisions) of the Work no later than the date stipulated in the RFQ, as amended (the "Substantial Completion Date"), subject to adjustments in the Contract Time, if any, approved by the Airport Authority in accordance with the Contract Documents. In addition, the CMR shall manage the subcontractors and suppliers who shall perform the Work in accordance with all schedule requirements set forth in **Exhibit SCH**, including without limitation any specified milestone dates or dates for Substantial Completion or Final Completion of phases or portions of the Work, and any special requirements for achieving Substantial Completion set forth therein. As used in the Contract Documents, the terms "Substantial Completion" and "Substantial Completion Date" shall be deemed to refer to Substantial Completion of, or the Substantial Completion Date for, the portion of the Work for which a Substantial Completion date is stated above or in **Exhibit SCH**, severally or collectively as the context may require. If more than one Notice to Proceed is given to the CMR, the Contract Time shall commence with the first Notice to Proceed issued, unless otherwise specified in such notice. The CMR shall achieve Final Completion of the Work, no later than ninety (90) calendar days after Substantial Completion of the Work (or any portion thereof as the case may be).

**1.3.2 *Time of the Essence.*** The CMR understands and agrees that the times for Substantial Completion of the Work (or designated portions thereof) and Final Completion of the Work as provided in the Contract Documents are essential conditions of the Contract. The CMR agrees to the liquidated damages set forth in the Contract Documents and as set forth in **Exhibit SCH**. The Parties agree the liquidated damage amounts set forth in the Contract Documents are not a penalty, but rather are the agreed upon reasonable amounts required to cover certain losses, expenses and damages of the Airport Authority in the event the CMR fails to achieve the requirements of the Contract Documents. The liquidated damages set forth in the Contract Documents have been agreed to and fixed by the Parties because of the uncertainty and impracticability in affixing actual damages of the Airport Authority. Such liquidated damages may be retained by the Airport Authority from time to time from any payments due to the CMR. Notwithstanding anything to the contrary in the Contract Documents, the assessment of liquidated damages shall not be the Airport Authority's sole and exclusive remedy for the CMR's failure to comply with the Contract Documents.

## **1.4 CMR'S OBLIGATIONS**

**1.4.1** The CMR shall assist the Airport Authority for its various projects within the Project and specifically perform the following:

- .1 The CMR with the Design Professional shall establish on-site organization and lines of authority in order to carry out the overall plans of the Design Professional and Airport Authority.
- .2 The CMR with the Design Professional shall establish procedures for coordination among the Airport Authority, all subcontractors and suppliers, and implement such procedures.
- .3 Consistent with the Project Schedule issued with the bidding documents, and utilizing the schedules prepared by the CMR in cooperation with the Design Professional shall update the Project, including sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement. The CMR with the Design Professional shall include the Airport Authority's occupancy requirements showing portions of the Project having occupancy priority. The CMR with the Design Professional shall update and reissue the Project Schedule as required to show current conditions and revisions required by actual experience.
- .4 The CMR in cooperation with the Design Professional shall endeavor to achieve satisfactory performance from all subcontractors and suppliers. When the requirements of a trade contract are not being fulfilled, and the nonperforming party will not take satisfactory corrective action, the CMR with the Design Professional will take appropriate action, and notify the Airport Authority of the action and the results achieved.
- .5 The CMR recognizes that the Design Professional in many instances of development will implement procedures for the review and processing of applications for progress and final payments, such procedures to be consistent with this Agreement.
- .6 The CMR shall maintain at the Project site on a current basis: a record copy of all trade contracts, Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the trade contracts or Work.
- .7 The CMR shall observe each trade contractor's checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing.
- .8 Following the Design Professional's issuance of a certificate of substantial completion of the Project or designated portion thereof, the CMR shall evaluate the completion of the Work of the trade contractors and make recommendations to the Design Professional when Work is ready for Final Inspection. The CMR shall cooperate with the Design Professional in conducting final inspections.

- .9 Any provision hereof to the contrary notwithstanding, the CMR shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction.
- .10 The CMR shall directly interact with all regulatory agencies as appropriate and required to coordinate construction activities and processes.
- .11 The CMR shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels, key site elevations, and all underground utilities (with coordinates, elevations and photographs). The CMR shall make all records available to the Airport Authority and the Design Professional. The CMR shall at the completion of the Project, deliver all such records to the Design Professional for the Airport Authority.
- .12 The CMR shall arrange for delivery and storage, protection and security for Airport Authority-purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.
- .13 The CMR shall be responsible for obtaining and coordinating the connection and commencement of all electric, sewer and utility services for the Project. The CMR shall obtain all necessary licenses, building and other permits, and similar authorizations from governmental authorities required to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions. The CMR shall secure all necessary approvals required for the Project, use or occupancy of permanent structures or for permanent changes in existing facilities. The CMR shall notify the Airport Authority of all conflicts between the Plans, Specifications and Drawings, and any laws, ordinances, rules and regulations, and restrictions that come to its attention. If CMR performs any of the Work knowing it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give the Airport Authority notice thereof prior to performance thereof, the CMR shall bear all costs arising therefrom.
- .14 The CMR shall directly interact with all on-site third party vendors, as appropriate and required to coordinate construction activities and processes.
- .15 CMR shall take reasonable precautions necessary to prevent loss or damage caused by vandalism, theft, burglary or pilferage of the property of the Airport Authority located within those areas of the Project which CMR controls. CMR shall have full responsibility for the security of such property of the Airport Authority located in such areas and, to the extent not covered by any builder's risk insurance procured by the Airport Authority, shall reimburse the Airport Authority for any such loss, damage or injury incurred as a result of CMR's failure to take such reasonable precautions, except such as may be directly caused by agents or employees of the Airport Authority.
- .16 The CMR shall develop, administer, and enforce the CMR's safety program with all of the trade contractors and coordinate the safety programs that the trade contractors have in accordance with the requirements of all regulatory agencies.
- .17 The CMR shall keep full and detailed records and accounts related to this project and to the cost of the Work and exercise such controls as may be necessary for proper financial

management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Airport Authority. The Airport Authority and the Airport Authority's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the CMR's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. In addition, the CMR shall make it a condition of all subcontractors relating to the Work that any and all subcontractors will keep full and accurate records of the project and supporting documentation and costs incurred and items billed in connection with their Work and that such records shall be open to audit and copying by the Airport Authority or its authorized representatives during the performance of the Work and until seven (7) years after its final completion. The CMR shall preserve these records for a period of seven (7) years after final payment, or for such longer period as may be required by law. The Airport Authority's representative will have the right to reproduce and audit all such documents.

**1.4.2** The CMR shall develop its own staffing plan and review that of the subcontractors or suppliers.

**1.4.3** The CMR shall perform its services with the skill and care ordinarily provided for CMRs practicing in the same or similar locality under the same or similar circumstances. The services shall be performance expeditiously and shall be subject to request for extraordinary additional services if needed.

**1.4.4** The CMR shall at all times refrain from any activity, employment, interest, or contribution that would compromise or reasonably appear to compromise the CMR's judgment with respect to the projects.

**1.4.5** That in addition to the general adoption of the RFQ dated July 29, 2019 and any of its addendum, this Contract specifically makes reference to and adopts pages 17-20 of the RFQ mentioned above for incorporation in these CMR obligations.

## **ARTICLE 2**

### **CONTRACT DOCUMENTS**

#### **2.1 CONTRACT DOCUMENTS**

**2.1.1** The Contract Documents are those documents set forth in **Exhibit CD** hereto, and which are incorporated herein by reference as if fully set forth herein. CMR represents that it has examined and understands all of the Contract Documents and has visited the Site, examined and familiarized itself with the local conditions under which the Work is to be performed, including labor and material market conditions and any work in progress under previously awarded contracts, verified to its satisfaction the nature and quantity of the work involved, and correlated its observations with the requirements of the Contract Documents, and the CMR acknowledges its satisfaction with the same. Such documents taken together as a whole constitute the Contract between the Parties hereto, and they are as fully a part of this Contract as if they were set out verbatim and in full herein.

**2.1.2** This Contract is subject to any and all applicable laws, statutes, regulations, building codes and other codes, ordinances, rules, orders, guidelines, requirements and interpretations of the United States of America, the State of Michigan, the County of Clinton, the Airport Authority and other federal, state and local governmental agencies and authorities having jurisdiction, and all amendments thereto, and the orders of courts of competent jurisdiction ("Applicable Laws"), and to the terms and conditions of any Project Approvals and any other agreements or commitments made by the Airport Authority to or with any such governmental agencies and authorities which are referred to or incorporated in the Contract Documents or otherwise delivered or made available to the CMR. If and to the extent that any requirements contained in the Contract Documents do not conform to or are inconsistent with such Applicable Laws or approvals or agreements to which the Contract is subject or by which it is governed, such Applicable Laws or approvals or agreements shall have precedence over any matters set forth in the Contract Documents, unless otherwise specifically directed or approved by the Airport Authority. All provisions required by Applicable Laws to be inserted in the Contract Documents shall be deemed to be and are hereby incorporated in the Contract by reference.

**2.1.3** The intent of the Contract Documents is to describe functionally complete and fully finished facilities, and it is intended that the CMR require the subcontractors and suppliers to furnish all labor, Materials, tools, Equipment and other items and services necessary for the proper execution and completion of the Work in accordance therewith, including all work that may not be specifically shown but that is incidental to or reasonably inferable from the Contract Documents as being necessary to produce the intended results, unless it is specifically indicated in the Contract Documents that such work is to be performed by others, and to complete the Project in a satisfactory manner, ready for use or operation by the Airport Authority. In addition, the CMR shall require the subcontractors and suppliers to perform the Work consistently with, the extra degree of care and skill required in connection with construction on or about an operating airport with respect to health and safety, protection of aircraft and other equipment and facilities, cleanliness of the Site, and the protection of existing utilities, adjacent Runways, Taxiways, aprons, parking areas, other paved areas and other property and facilities of any nature. In agreeing to the Contract Documents and the Contract Price, the CMR has considered and included those circumstances and conditions.

**2.1.4** In case of inconsistency, discrepancy, conflict or error among the Contract Documents or within any of the Contract Documents with respect to any matters, the Contract Documents shall be interpreted on the basis of the priority reasonably determined by the Airport Authority and Design Professional as being consistent with the overall intent of the design and required to produce the intended result. Any inconsistency, discrepancy or error that cannot be resolved by interpretation of this paragraph, shall be governed by the general provision that the inconsistency, discrepancy or error shall be resolved in favor of the Airport Authority. Subject to such determinations by the Airport Authority and Design Professional, the Contract Documents shall be interpreted on the basis of the following priorities, the first listed having the highest priority:

- .1 Written amendments to this Contract, the General Provisions, and the Supplemental Terms and Conditions signed by both Parties (those of a later date shall take precedence over those of an earlier date).
- .2 Change Orders (those of a later date shall take precedence over those of an earlier date) subject to the qualifications stated below.

- .3 The Design Professional Services Agreement and the General Provisions, including any attachments and exhibits to the same.
- .4 Supplemental Terms and Conditions, including DBE Program requirements and FAA-AIP Federal Contract Construction Provisions attached to the RFQ, including Addenda.
- .5 Design Professional's Supplemental Instructions (as defined below) and Field Orders (those of a later date shall take precedence over those of an earlier date).
- .6 Technical Specifications (Division 1 of the Specifications shall take precedence over other divisions of the Specifications). Refer to SP-10 for additional precedence of technical documents.
- .7 RFQ and Addenda (those of a later date shall take precedence over those of an earlier date) subject to the qualifications stated below.

Exhibits and other attachments attached to or incorporated by reference in any of the documents listed above shall have the same priority as the document to which they are attached or in which they are incorporated. Among Drawings, detail Drawings shall govern over general Drawings, larger scale Drawings shall control over smaller scale Drawings. Drawings and Specifications contained or incorporated in Addenda, Change Orders, Field Orders shall have the same priority as other Drawings and Specifications, with the latest date taking precedence over earlier dates. Figured dimensions shall control over scaled dimensions, and work not dimensioned shall be as directed by the Design Professional. Work not particularly shown, identified, sized or located shall be the same as similar items that are shown or specified. In the event of a conflict, inconsistency or discrepancy within or among the Specifications or Drawings as to the quantity or quality of work or Materials or quality of construction methods, the higher quality or greater quantity shall be furnished or performed unless otherwise specifically directed in writing by the Design Professional. Without limitation, if there is a conflict or discrepancy between or among the provisions of the Contract Documents and any referenced standard specification, manual, or code of any technical society, organization or association, or Applicable Laws, the provisions that are more stringent or result in a higher quality or level of performance shall take precedence, unless otherwise directed by the Design Professional.

**2.1.5** Any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both. In the event of any duplication, conflict, inconsistency or discrepancy among or within the Drawings and the Specifications (or among or within other portions of the Contract Documents so far as the same pertain to the Drawings or the Specifications) the matter shall promptly be brought to the attention of the CMR, Airport Authority and Design Professional for instructions. If, having identified any duplication, conflict, inconsistency or discrepancy, the CMR proceeds with the Work without instructions from the Design Professional, the CMR does so at its own risk and shall be responsible for performing corrective Work at its own cost.

**2.1.6** All indications or notations which apply to one of a number of similar situations, Materials or processes shall be deemed to apply to all such situations, Materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents. A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and Material throughout the corresponding parts of the Work. Where necessary and where reasonably inferable from the Contract Documents, the CMR shall adapt

such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the Design Professional. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

**2.1.7** Where Applicable Laws or other codes, standards, requirements or publications of public or private bodies are referred to in the Contract Documents, references shall be understood to be to the latest revision in effect on the date of issuance of the affected Contract Documents, except where otherwise indicated. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

**2.1.8** The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 a formal written amendment,
- .2 a Change Order.

The Contract Price and the Contract Time may only be changed by a Change Order or a written amendment. In addition, the requirements of the Contract Documents may be clarified or supplemented, and minor changes, variations, adjustments and deviations in the Work may be authorized, by Field Order, by addition instructions provided by Design Professional (“Design Professional’s Supplemental Instructions”) to the extent approved by a Change Order, or by Design Professional’s approval of a Shop Drawing.

**2.1.9** The CMR shall refer to all of the Drawings, and to all of the sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. Neither the Airport Authority nor the Design Professional assumes any liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested Parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Specifications or on the Drawings as to the allocation of the Work among the subcontractors, the CMR shall be solely responsible for resolving the claim and shall be responsible for ensuring that all of the Work is completed, regardless of where it appears in the Specifications or on the Drawings.

**2.1.10** If any term or provision of any of the Contract Documents, or the application thereof to any Party or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remaining provisions of the Contract Documents, or the application of such term or provision to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of each of the Contract Documents shall be valid and shall be enforced to the fullest extent permitted by law.

**2.1.11** Except as otherwise expressly provided in the Contract Documents, the Contract Documents shall not be construed to create a contractual relationship of any kind (i) between the Airport Authority and any Subcontractor or (ii) between any persons or entities other than the Airport Authority and CMR; the Airport Authority and Design Professionals. Unless otherwise expressly stated in the Contract Documents, the Parties do not intend that any third party shall be a beneficiary of any provision of the Contract Documents. The CMR understands and agrees

that the Design Professional's obligations are to the Airport Authority and, by performing those obligations properly, the Design Professional may increase the burdens and expenses of the CMR, its Subcontractors, or sureties or any of them.

**2.1.12** Unless otherwise specifically provided, the words "include," "including," "such as" or words of similar meaning are not intended as limiting or exclusive, and shall be interpreted with the same effect as if followed by the phrase "without limitation" or "but not limited to." The provisions of the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**2.1.13** Article, section and paragraph headings contained in these General Conditions or in other Contract Documents are for convenience of reference only, and shall not affect the meaning or interpretation of the provisions of the Contract Documents.

**2.1.14** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**2.1.15** The Airport Authority may furnish to the CMR surveys describing the physical characteristics, legal limitations and utility locations for the Site, and a bench mark and baseline from which the CMR shall establish grades, lines and levels necessary for the proper placement of the Work. Any and all surveys, plans, specifications, reports and the like provided by the Airport Authority to the CMR shall be for reference purposes only, and they shall have no right to believe the information furnished is accurate. The CMR or its subcontractors and suppliers waives any and all claims against the Airport Authority which are based upon inaccurate documents provided by the Airport Authority. The CMR shall be solely responsible for verifying the exact locations of utilities on the Site or serving the Project as they relate to performance of the Work.

## **2.2 AIRPORT AUTHORITY OWNERSHIP AND USE OF DOCUMENTS**

**2.2.1** The Drawings, Specifications and other documents prepared by the Design Professional are Instruments of Service of the Design Professional's service through which the Work to be executed by the CMR is described. Neither the CMR nor any subcontractor or supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Professional, and, subject to the rights reserved by the Airport Authority in its agreement with the Design Professional, the Design Professional shall be deemed the author of them and will retain common law, statutory and other reserved rights, including the copyright of the Drawings and Specifications. The CMR may retain record sets of the Drawings and Specifications. The Drawings, Specifications and other documents prepared by the Design Professional, and copies thereof furnished to the CMR, are for use solely with respect to this Project. The CMR shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing the Project. Further, they are not to be used by the CMR or any subcontractor or supplier on other projects without the specific written consent of the Airport Authority and the Design Professional. The CMR or its subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Professional appropriate to and for use in dealing with governmental authorities in the ordinary course of permitting and constructing the Project, and otherwise in the execution of their work

under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Professional's copyright or other reserved rights. The CMR shall require subcontractors and suppliers to comply with this subparagraph 2.2.1.

**2.2.2** If the Design Professional provides to the CMR copies in electronic format of CAD Drawings prepared by the Design Professional ("Electronic Data"), for use in connection with preparation by the CMR and its Subcontractors of coordination drawings, Shop Drawings or other submittals, as-built or record drawings, or for any other purpose, the CMR's use of such Electronic Data shall be at the sole risk of the CMR and its Subcontractors, and neither the Airport Authority nor the Design Professional shall be responsible for any variance between such Electronic Data and the actual Contract Documents. The CMR agrees that the Electronic Data shall not be used for any other purpose or transferred to others without the Airport Authority's and Design Professional's prior written consent. Items shown in the Electronic Data may not be to scale and the CMR is obligated to verify all dimensions indicated on the Electronic Data. The CMR acknowledges that the information contained in the Electronic Data may not be complete, and may be subject to subsequent changes. The CMR acknowledges that anomalies and errors can be introduced into the Electronic Data when it is transferred or used in an incompatible computer environment. Further, the CMR acknowledges and solely accepts the risks associated with and the responsibility for any damage to hardware, software or computer systems or networks related to any use of the Electronic Data. The Electronic Data is being furnished "as is," and the CMR hereby releases the Design Professional and the Airport Authority from any damage, loss or expense of any kind arising out of the transfer or use of the Electronic Data. Once the project is complete and the Airport Authority has paid the Design Professional, the Airport Authority shall have Ownership of all Instruments of Service.

## **2.3 CMR'S OBLIGATIONS**

**2.3.1** Before starting the Work, and at frequent intervals during the progress thereof (including prior to commencement of each major element of the Work, and prior to the start of work of each subcontractor), the CMR shall carefully examine the Site and carefully study and compare the Contract Documents with each other and with conditions at the Site, including work completed or in progress under this Contract or other contracts, and with such information, documents, plans and criteria as may be available in connection with the Project and shall at once report to the Design Professional and the Airport Authority all conflicts, errors, ambiguities, inconsistencies, discrepancies, omissions or non-compliance with building codes or other Applicable Laws that he discovers, and the CMR shall obtain a written interpretation of clarification from the Airport Authority before proceeding with any Work affected thereby. If the CMR to proceed with the Work without such notice to the Design Professional and the Airport Authority, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents and other conditions he could have discovered the same, the CMR shall perform all necessary corrective work and bear all costs arising therefrom and shall have no claim for increase in the Contract Price or extension of the Construction Time for Extra Work made necessary thereby.

**2.3.2** Without limitation, the CMR shall take field measurements and verify field conditions as necessary and shall, before commencing activities at the Site, carefully compare such field measurements and conditions and other information known to the CMR with the Contract Documents and information provided by the Airport Authority. Errors, inconsistencies or

omissions discovered shall be reported promptly to the Design Professional and the Airport Authority using a Request For Information document provided by the Airport Authority.

**2.3.3** The CMR shall perform the Work in accordance with Good Industry Practices and the standards established by, and other requirements of, the Contract Documents and submittals approved pursuant to the subsection 60-09 of the General Provisions, titled SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

**2.3.4** The CMR shall give the Design Professional timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work, and the Design Professional shall respond within a reasonable time thereafter. The CMR shall use a Request For Information document provided by the Airport Authority.

**2.3.5** The CMR shall not knowingly proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Design Professional. If the CMR proceeds with such Work without obtaining additional drawings or instructions, it shall correct, at its own expense, Work incorrectly done.

**2.3.6** The Airport Authority may engage separate contractors to perform work as a part of or related to the Project ("Related Work"). The CMR shall cooperate and coordinate with any such separate contractors, as provided in this section and in the General Provisions and Supplement Terms and Conditions. If determined appropriate by the Airport Authority, a separate contractor shall have the right to monitor the construction of the Work, and the CMR shall meet with such separate contractor at such times as the CMR or such separate contractor deem appropriate, and the CMR shall provide access to and accommodate representatives of such separate contractor to permit such representatives to observe the Work. If determined appropriate by the Airport Authority, the CMR shall have the right to monitor the construction of the Related Work. The CMR shall notify the Airport Authority immediately of any conflicts, gaps, omissions, inconsistencies, incompatibilities, delays, deficiencies or other adverse impacts (collectively, "Conflicts") which the CMR discovers or observes at any time between or with respect to the design and/or construction of the Work and the design and/or construction of any Related Work. Such notice shall be given by the most expedient method available, with written confirmation delivered within five days after the CMR observes or discovers such Conflict.

**2.3.7** The CMA shall make no claim against the Airport Authority for additional compensation, damages, delay or otherwise, nor raise any defense in a claim brought by the Airport Authority, based on any Conflict between the design and/or construction of the Work and the design and/or construction of any Related Work, or based on any other condition of or relating to the Related Work that renders it more difficult or costly to construct the Work, and no such Conflict or other condition shall be considered a differing site condition as defined in the General Provisions. The CMA's waiver of claims and defenses provided in the preceding sentence shall not apply, however, to any Conflict or condition as to which notice was given by the CMA to the Airport Authority as provided above, and the Conflict or condition was not resolved by the Airport Authority or the separate contractor.

**2.3.8** In construction of the Work, the CMR shall make allowances in its schedule and budget for coordination of its Work with Related Work. If the Work to be performed by the CMR and the Related Work are integrated and inter-dependent, the CMR agrees (i) to use its best efforts to

coordinate its Work with the Related Work, and to enable such separate contractor(s) to effectively coordinate the Related Work with the CMR's Work, (ii) to accommodate schedule changes reasonably requested by such separate contractor(s) to the extent possible without causing undue disruption to the CMR's own schedule, and to consider potential impacts on such separate contractor(s) when making adjustments to its own schedule, and (iii) in the event of schedule conflicts or other disputes between the CMR and such separate contractor(s), to work diligently and in good faith with the Airport Authority and such separate contractor(s) to resolve such conflicts or disputes promptly and fairly.

**2.3.9** The Airport Authority shall be responsible for obtaining those Project Approvals (as defined in the Contract Documents) specifically identified in **Exhibit PA** as being the responsibility of the Airport Authority. The CMR shall assist and cooperate with the in connection with obtaining such Project Approvals. The CMR shall be responsible for obtaining all other Project Approvals, including but not limited to those Project Approvals identified in **Exhibit PA**, as provided in the Contract Documents.

**2.3.10** Without limiting the CMR's obligations under other provisions of the Contract Documents, the CMR shall require that the CMR shall comply at all times and in all respects with the requirements of Applicable Laws, as defined in the Contract Documents, and with the terms and conditions and other requirements of the Project Approvals and all other mitigation agreements and other agreements, plans and undertakings now or hereafter made, obtained or entered into by the Airport Authority with respect to the Project, including those listed on **Exhibit PA**. **Exhibit PA** has been prepared for convenience of reference only, and the Parties recognize that **Exhibit PA** may not contain a complete listing or precise descriptions of all permit requirements or other agreements. In the event of any inconsistency, omission or discrepancy between the descriptions of or other information concerning the permit requirements contained in **Exhibit PA** and the requirements and conditions contained in the Project Approvals, the Project Approvals shall govern.

**2.3.11** Within ten (10) days after the Airport Authority issues any Notice to Proceed, the CMR shall submit to the Airport Authority and the Design Professional for review:

- .1 a preliminary progress schedule as required by the Contract Documents;
- .2 a preliminary schedule of submittals as required by the Contract Documents;
- .3 a preliminary schedule of values for the Work as required by the Contract Documents.

Promptly upon submission of the schedules referred to above, the CMR shall meet with the Airport Authority to review such schedules. The CMR shall, within five (5) days after such meeting, make corrections and adjustments to such schedules to incorporate the comments and directions of the Airport Authority and the Design Professional and resubmit all such schedules. No progress payment shall be made to the CMR until each of such schedules is acceptable to the Airport Authority.

**2.3.12** Within ten (10) days after the Airport Authority's written notification of award to the CMR shall deliver to the Airport Authority, with copies to each Additional Insured identified in the Contract Documents, certificates of insurance and such other evidence of insurance as the Airport Authority or any such Additional Insured may reasonably request, for all insurance which the CMR

is required to purchase and maintain in accordance with the Contract Documents. Providing certificates of insurance is a condition precedent to the issuance of any Notice to Proceed.

**2.3.13** Within ten (10) days after the Airport Authority's written notification of award to the CMR shall deliver to the Performance and Payment Bonds required by the Contract Documents. Providing the Performance and Payment Bonds is a condition precedent to the issuance of any Notice to Proceed.

**2.3.14** Within thirty (30) days after the date of this Contract, the CMR shall deliver to the Airport Authority a site-specific health and safety plan (refer to the requirements contained in Division 1 of the Specifications). The site-specific safety plan is subject to the review of the Airport Authority, but the CMR shall be solely responsible for all aspects of safety. The site-specific health and safety plan must be approved by the Airport Authority prior to the commencement of any work on the site in accordance with all state and federal statutes and laws, including rules and regulations of the FAA.

**2.3.15** The CMR shall assist in the overall management of labor relations in connection with the Work. The CMR shall manage the subcontractors and shall be ultimately responsible to ensure that there are no strikes, picketing, work stoppages, slowdowns or other disruptive activities by any unions or employees that affect the prosecution of the Work.

### **2.3.16 *Monthly Progress Reports***

On or about the fifteenth (15th) of each month, or as otherwise directed by the Airport Authority, the CMR in cooperation with the Design Professional shall furnish to the Airport Authority a Monthly Progress Report for the preceding month, in form and substance acceptable to the Airport Authority, containing, without limitation, the following information:

- (a) Executive summary
- (b) Project status overview including, without limitation, the following:
  - (i) Progress report by division of work or area;
  - (ii) Quality control/quality assurance report;
  - (iii) Safety and loss control report;
  - (iv) Request for Information (RFI) report; and
  - (v) Submittal status report/updated submittal schedule.
- (c) Progress photographs
- (d) Project schedule update including the following:
  - (i) Summary Schedule (progress bar chart);
  - (ii) Progress Schedule Update; and
  - (iii) Work plan schedule for the pending period.
- (e) Changes and claims update including the following:
  - (i) List of outstanding Change Orders; and
  - (ii) List and status of outstanding Change Proposal requests and GC Change Requests, and any other potential changes, claims or disputes or other outstanding issues or information required from the Airport Authority.

**2.3.17** The CMR shall establish an organization including lines of authority and communication as necessary to organize and direct the complete construction of the Work and carry out all requirements of the Contract Documents. A listing of CMR's key staff and the hourly rates for

each is set forth on **Exhibit KPS** attached hereto. Any additional key staff of the CMR (i.e., staff who will have primary responsibility for a significant portion or aspect of the services to be provided by the CMR under the Contract Documents, or who are otherwise designated as key staff by the Airport Authority) shall be subject to the Airport Authority's Chief Executive Officer's or his/her authorized designee's prior written approval, and upon such approval shall be considered key staff for purposes of this Contract. All key staff shall be available for and shall perform the responsibilities assigned to such staff throughout the construction of the Project. The hourly rates for the staff set forth in **Exhibit KPS** shall not be subject to change at any time.

**2.3.18** No substitution of any assigned and approved key staff or subcontractors shall be made by the CMR without the prior written consent of the Airport Authority, through its Chief Executive Officer, or his/her authorized designee. Before any such substitution is made, the CMR shall submit to the Airport Authority the qualifications of any proposed replacement. The removal or replacement, without the Airport Authority's Chief Executive Officer's, or his/her authorized designee consent, of any of the key staff listed in **Exhibit KPS** (or subsequently approved) or subcontractors, other than as a result of disability, death or bona fide retirement or termination of employment, shall constitute a material breach of the Contract Documents.

**2.3.19** The Airport Authority may require replacement of any member of the CMR's key staff or subcontractor with or without cause, and may require increased levels of staffing by the CMR, at no increase in the Contract Price, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain the quality of the Work and progress in accordance with the Contract Documents. By executing this Contract, the CMR certifies that the CMR and each member of its key staff, including subcontractors, comply with all licensing, registration and other requirements applicable to the CMR and the performance of its services hereunder pursuant to Applicable Laws. The Airport Authority shall have the unconditional right to require the CMR or any subcontractor to remove or replace any on-site personnel (whether or not designated as one of the key personnel) who violate Airport Authority policies or work rules or who the Airport Authority otherwise finds objectionable with other personnel approved by the Airport Authority. If the Airport Authority requires the replacement of on-site personnel, the CMR shall do so immediately and without any increase in the Contract Price or any change to the Contract Time or schedule.

## **ARTICLE 3**

### **COMMUNICATIONS**

#### **3.1 NOTICE**

All notices, consents, requests, approvals, instructions and other communications provided for in the Contract Documents shall be in writing and shall be deemed sufficiently given if (a) delivered personally, (b) delivered by overnight courier service (such as U.S. Postal Service Express Mail, Federal Express, DHL or other similar courier services) providing evidence of receipt, (c) placed in the United States mail, registered or certified, postage prepaid (in which event such notice shall be deemed to have been received two Working Days after being placed in the United States mail), or (d) by email provided a follow-up U.S. Mail is sent the same day for which service shall be deemed to be received two working days thereafter. All notices shall be addressed as follows:

If to the Airport Authority: Capital Region Airport Authority  
Administrative Offices – 3<sup>rd</sup> Floor  
Capital Region International Airport  
4100 Capital City Blvd.  
Lansing, MI 48906  
Attention: Wayne Sieloff, President and CEO  
Email: [wsieloff@craa.com](mailto:wsieloff@craa.com)

with a copy to: Bonnie Wohlfert  
Executive Assistant  
Email: [info@craa.com](mailto:info@craa.com)

If to the CMR: \_\_\_\_\_

with a copy to: CMR's Project Manager  
\_\_\_\_\_

Invoices for payment shall be directed to: Capital Region Airport Authority  
Administrative Offices – 3<sup>rd</sup> Floor  
Capital Region International Airport  
4100 Capital City Blvd.  
Lansing, MI 48906  
Attention: Wayne Sieloff, President and CEO  
Email: [wsieloff@craa.com](mailto:wsieloff@craa.com)

Either Party may change its mailing address or recipient of notice by giving 15 Calendar Days' prior written notice to the other Party in the manner specified above. In the event of an emergency, notices and other communications shall be given in the most expedient manner possible in the circumstances, followed by written notice as provided above. The fact that any specific matter is discussed at a Project meeting and such discussion or any resulting decision appears in the written minutes of the Project meeting shall not constitute the giving of notice with respect to such matter to any person or Party for purposes hereof.

### **3.2 COMMUNICATIONS**

**3.2.1** Copies of all communications from the CMR to the Design Professional shall be provided simultaneously to the Airport Authority.

**3.2.2** The CMR shall provide simultaneously to the Design Professional any communications which the CMR gives to the Airport Authority or any of the Airport Authority's Representatives relating to the Drawings, Specifications or any modifications thereto.

**3.2.3** The CMR shall be responsible for coordinating with and following any communications protocols for the Project established by the Airport Authority. The CMR shall provide Project documents in electronic format suitable for use in the Project communication system. The CMR shall comply with all restrictions established by the Airport Authority on the distribution of information outside of the Project team.

## ARTICLE 4

### MISCELLANEOUS

#### 4.1 EXECUTION OF COUNTERPARTS

This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the Parties hereto may execute this Contract by signing any such counterpart.

#### 4.2 SUCCESSORS AND ASSIGNS

**4.2.1** The Airport Authority and the CMR bind themselves and their successors, assigns and legal representatives to the other Party hereto and to the successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the Contract Documents. Notwithstanding the foregoing, the CMR shall not assign or transfer the Contract or sublet or subcontract it (other than subcontracting portions of the Work as expressly permitted by and in accordance with the Contract Documents), or otherwise transfer or assign any of its rights or delegate any of its obligations under all or any portion of the Contract Documents without the previous written consent of the Airport Authority, through its Chief Executive Officer, which consent may be withheld by the Airport Authority in its sole discretion, nor shall the CMR assign any moneys due or to become due to it hereunder, without such previous written consent of the Airport Authority. Any assignment of the Contract or any interest therein by the CMR without such consent shall be void, and the assignee in such case shall acquire no rights in the Contract or in such moneys. If the CMR is not a publicly owned corporation, the sale or transfer of more than 50% of the voting stock or beneficial interest of the CMR shall constitute an assignment of this Contract for purposes of this Paragraph.

**4.2.2** The Airport Authority may assign the Contract to any successor or assignee of all or any part of the Airport Authority's interest in the Project, or to any other public agency or other entity. In the event of any such assignment of this Contract by the Airport Authority, the CMR shall, promptly upon request, execute and deliver such instruments acknowledging and consenting to such assignment as may be reasonably requested by the Airport Authority or any assignee.

#### 4.3 GOVERNING LAW

The Contract shall be governed by the laws of the State of Michigan and venue shall only be in Clinton County, Michigan.

#### 4.4 INTEGRATION

The Contract Documents represent the entire and integrated agreement between the Airport Authority and the CMR and supersede all prior negotiations, representations or agreements, either written or oral. To the extent permitted by law, the terms of the Contract shall not be altered, modified, supplemented or amended in any manner whatsoever, except by written instrument as provided in the Contract or General Provisions.

#### **4.5 INDEPENDENT CONTRACTOR**

The CMR shall act solely as an independent contractor in performing under the Contract, and nothing in the Contract shall be construed to create an agency, partnership, or joint-venture relationship between the CMR and the Airport Authority or between any members of the CMR and the Airport Authority. All personnel of the CMR and of the Subcontractors involved in any aspect of performing the Work shall be subject to the direction, supervision and control of the CMR and not the Airport Authority, subject to the terms and conditions of the Contract Documents.

#### **4.6 WAIVER**

Failure of the Airport Authority to complain of any act or failure to act of the CMR or to declare the CMR in default hereunder, or otherwise to exercise any right or power accruing upon the non-compliance or failure of performance by the CMR, irrespective of how long such failure or non-compliance continues, shall not constitute a waiver of the Airport Authority's rights hereunder. Inspection, review, approval, acceptance or payment by the Airport Authority, or failure of the Airport Authority to perform any inspection or review hereunder, shall not constitute a Final Acceptance of the Work or any part thereof and shall not operate as a waiver of any rights under the Contract or release the CMR from any of its obligations hereunder.

#### **4.7 CLAIMS AND DISPUTES**

The CMR agrees to attend and/or participate in any dispute involving the Airport Authority, CMR, Design Professional, subcontractors, architects, and engineers, or other relevant parties that are under contract as follows: A meeting of the senior representatives of each of the parties to be held within 60 days of any notice of disputes; in the event that such a meeting does not resolve the dispute, any party may provide notice of a request to mediate through the American Arbitration Association Mediation Rules, and if not resolved within 60 days after the date of notice, any of the parties may file for arbitration with the American Arbitration Association with each party paying its own respective fees. Result of the American Arbitration Association may be entered in a court of competent jurisdiction and the locale for any of the dispute resolution proceedings shall be in either Clinton County or Ingham County, Michigan. In addition, each of the parties' consent to consolidation and joinder to substantially resolve any of the disputes or claims. Arbitration shall not apply if there is a third party lawsuit or a need for an injunction for immediate relief.

#### **4.8 CONTRACT INTERPRETATION**

In the event that the Airport Authority terminates this contract for cause, it may be switched to a termination for convenience at any time.

#### **4.9 INDEMNITY AND HOLD HARMLESS**

**4.9.1** The CMR shall hold harmless and indemnify the Airport Authority, its subsidiaries, assigns, officers, directors, and employees from and against any and all liability, losses, claims, potential claims, damages, penalties, fines, demands, actions, causes of action, actual attorney fees, costs, and expenses (including expert witness fees), and interest in lawsuits, arbitration, administrative proceedings, or judgments regardless of legal theory, from whatever source, and by whomsoever brought without regard to a third-party claim in any way related to the CMR's performance, lack of performance, services, breach of this Agreement, or any negligent act, error, omission, willful

misconduct, or intentional act, including CMR's consultants, agents, suppliers, employees, subcontractors, or any person or organization which the CMR controls or is liable, except for the negligence or breach of contract of the Airport Authority.

**4.9.2** The Airport Authority will not hold harmless or indemnify the CMR for any claim or liability.

**4.9.3** The CMR shall cause all subcontractors, agents, suppliers, and trade contractors who may have a contract with the CMR to perform construction or installation work in the areas where Work will be performed under this Agreement, to agree to indemnify, defend and hold the Airport Authority, its employees, managers, members, officers, assigns, designees and the CMR (hereinafter collectively called the "Indemnitees") harmless.

**4.9.4** If the claims against any person or entity indemnified in this section by an employee of the CMR, its agents, or subcontractors, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited the limitation of the amount or type of damages, compensation or benefits payable by or for the CMR, its agents, subcontractors, and others under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **4.10 HAZARDOUS MATERIALS AND ENVIRONMENTAL**

**4.10.1** The CMR agrees that it and any subcontractors, vendors or other persons acting on CMR's behalf under the Contract shall comply with Due Care and Continuing Obligation requirements, including any documentation related to those requirements. The CMR shall have any subcontractors, vendors or other persons that perform Work under the Contract agree to such compliance pursuant to applicable Michigan and federal laws and regulations.

**4.10.2** The CMR hereby agrees to waive or release Airport Authority and its trustees, officers, employees, agents, successors and assignees from any and all claims, demands, suits, losses, liabilities, costs, injuries or responsibilities of any kind or nature, known or unknown, related to or arising from the actual or threatened release of hazardous substances or materials on or from the Property ("Environmental Claims"), except if any actual or threatened release is solely caused by Airport Authority and its trustees, officers, employees, agents, successors or assignees. The CMR shall have any subcontractors, vendors or other persons that perform Work under the Contract to enter into a comparable waiver and release for the benefit of Airport Authority, its trustees, officers, employees, agents, successors and assigns.

**4.10.3** The CMR shall defend, indemnify and hold harmless Airport Authority and its trustees, officers, employees, agents, successors and assignees from any exacerbation of or exposure to hazardous substances or materials on or from the Property or other Environmental Claims arising from or during the performance of the Work, except to the extent solely caused by the negligence or willful misconduct of the Airport Authority or its trustees, officers, employees, agents, successors and assignees. The CMR shall have any subcontractors, vendors or other persons that work under the Contract to enter into a comparable agreement for the benefit of Airport Authority, its trustees, officers, employees, agents, successors and assigns.

**4.10.4** This Section's provisions, notwithstanding anything to the contrary in the Contract, shall survive completion of the Work. The CMR shall ensure that any agreement required and secured from subcontractors, vendors or other persons pursuant to this Section shall acknowledge that

Airport Authority and its trustees, officers, employees, agents, successors and assignees are intended beneficiaries of any such agreement.

#### **4.11 PARTNERING**

The Airport Authority and CMR agree to use various partnering concepts in prosecuting the various projects from time to time as they unfold over the period of this contract.

#### **4.12 DIGITAL DATA**

CMR agrees to utilize and/or cause to be utilized digital data including BIM.

#### **4.13 REPRESENTATIONS**

CMR represents that it has the requisite experience related to undertaking similar projects, experienced and licensed staff and professionals to undertake the projects contemplated by the Airport Authority, and has the financial and capital capability to pursue the Work to its fullest extent.

#### **4.14 SURVIVAL**

All terms and conditions of this Agreement shall survive the termination of the Agreement.

#### **4.15 BADGING AND ACCESS REQUIREMENTS**

CMR will be required to obtain Airport Authority identification badges for employees and vehicle access permits to permit access on the AOA. In addition, some of the work may require access to Customs and Border Protection areas which must be authorized by CBP.

#### **4.16 CONFIDENTIALITY AND CYBER SECURITY**

The CMR agrees that any information the CMR receives or reviews concerning the Airport Authority or the Airports, including, but not limited to, any information concerning the Airport Authority or Airports' past, present and future research, development, operations and business activities, and any other information or material proprietary to the Airport Authority of which the CMR may obtain knowledge or access from the Airport Authority during the CMR's performance hereunder (hereinafter "Confidential Information") is proprietary and confidential to the Airport Authority. The CMR agrees, on behalf of itself and all of its agents, to hold in confidence and not to directly or indirectly reveal, report, publish, disclose or transfer any of the Confidential Information to any person or entity, or utilize any of the Confidential Information for any purpose, except as may be agreed in writing in advance between the Airport Authority and the CMR. Prior to disclosure of Confidential Information to any of its employees or other authorized persons or subconsultants, the CMR agrees to obtain an appropriate agreement, containing all of the elements set forth herein, from those persons or firms to whom such information is disclosed or who otherwise gain access to such information to maintain the confidentiality of Confidential Information. The CMR further agrees to indemnify the Airport Authority against any and all liability, loss, cost, legal or other professional fees resulting from, or arising in connection with, unauthorized use or disclosure of Confidential Information by the CMR, its employees or any other authorized person to whom the CMR has disclosed Confidential Information.

The CMR and the Airport from time to time will have access to each other's digital system both as data owners and data vendors and each shall take precautions to protect the privacy of the data in those records and the corresponding liability that could flow from any cyber breach. The CMR shall include insurance of \$3 Million cyber liability and the Airport may have its own policy of cyber liability.

**4.17 EXHIBITS**

The following Exhibits are attached to and incorporated in this Contract. Terms used in the exhibits that are defined in this Contract or in other Contract Documents are used in accordance with such definitions.

Exhibit ALL	Allowances
Exhibit ALT	Alternatives
Exhibit CD	List of Contract Documents
Exhibit OPT	Options
Exhibit PA	List of Project Approvals and Other Requirements Exhibit KPS Key Project Staff
Exhibit RSP	Required Subcontract Provisions
Exhibit SCD	List of Site Conditions Documents
Exhibit SCH	Schedule Requirements
Exhibit PRICES	Prices of CMR
Exhibit ____	Anti-Terrorism Certificate
Exhibit ____	Supplemental Terms and Conditions
Exhibit ____	Required Insurance – Coverage and Amounts

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed on their behalf by their respective duly authorized officers, and witnessed, in multiple counterparts (each of which shall be deemed to be an original hereof) as of the date and year first above written.

**Witness:**

**Capital Region Airport Authority**

\_\_\_\_\_

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

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

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

**Witness:**

[Construction Professional as CMR]

\_\_\_\_\_

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

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

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



**EXHIBIT CD**  
**LIST OF CONTRACT DOCUMENTS**

1. CMR Agreement and all Exhibits.
2. General Provisions.
3. Supplemental Terms and Conditions.
4. Drawings prepared by \_\_\_\_\_ and dated \_\_\_\_\_.
5. Plans and specifications.
6. The Request for Bids No. \_\_\_\_\_ and any addenda thereto.
7. CMR's Bid Proposal dated \_\_\_\_\_ and signed by \_\_\_\_\_.
8. Performance and Payment Bonds delivered by the CMR.
9. Insurance Certificates delivered by the CMR.
10. Modifications/Change Orders issued after execution of the CMR Agreement.
11. Notice(s) to Proceed.

## EXHIBIT SCH

### SCHEDULE REQUIREMENTS

- a) The Airport Authority anticipates issuing a Notice of Award in \_\_\_\_\_.
- b) The Airport Authority will only issue a construction Notice to Proceed after the issuance of the Notice of Award and only after the CMR's submission of correct insurance and bonds, an executed contract, and required pre-construction submittals described in the Form of Agreement and General Terms and Conditions associated with this RFQ.
- c) The Airport Authority anticipates on issuing a construction Notice to Proceed in \_\_\_\_\_.
- d) The construction duration for \_\_\_\_\_ is \_\_\_\_\_ calendar days from the date of the Airport Authority's construction Notice to Proceed.
- e) If the CMR fails to achieve Substantial Completion of the Work within the specified construction duration, then in accordance with the Contract Documents, liquidated damages of \$\_\_\_\_\_ per day will be assessed for each calendar day beyond the scheduled date of Substantial Completion.
- f) If the CMR fails to achieve Final Completion of the Work within ninety (90) days of Substantial Completion, then in accordance with the Contract Documents, liquidated damages of \$\_\_\_\_\_ per day will be assessed for each calendar day beyond the schedule date of Final Completion.

**EXHIBIT SCD**  
**LIST OF SITE CONDITION DOCUMENTS**

## **EXHIBIT PA**

### **LIST OF PROJECT APPROVALS AND OTHER REQUIREMENTS**

The CMR is required to comply with all current federal, state and local, codes, regulations, laws, and ordinances applicable to the Work to be performed under the Contract, and obtain at the Airport Authority's expense all licenses and permits necessary for the performance of the Work. The CMR shall obtain all required Permits.

1. The Airport Authority may apply for the Soil Erosion and Sedimentation Control permit through the appropriate local and state authorities. The CMR shall be responsible for obtaining this permit and for requesting payment from the Airport Authority for all associated construction permit fees, inspection fees, bonds, and insurances of the governmental agency.
2. The Airport Authority will obtain the required airspace determination (7460 Form) from the Federal Aviation Administration (FAA). Coordination and assistance by the CMR in providing data to the FAA will be required.

## EXHIBIT RSP

### REQUIRED SUBCONTRACTOR PROVISIONS

The CMR shall require every Subcontract to contain the following provisions:

1. The Airport Authority is not a party to the Subcontract.
2. The Airport Authority has no relationship, contractual or otherwise, with the Subcontractor, except as provided below.
3. In the event of termination of the Contract between the Airport Authority and the CMR for any reason the Subcontract may, at the sole option of the Airport Authority, be assigned to the Airport Authority or another contractor, and the Subcontractor shall continue to work as though its original Subcontract was with the assignee. Such assumption shall become effective only upon written notice by the Airport Authority that the Airport Authority or such other contractor is assuming the Subcontract. The Subcontractor shall, at the Airport Authority's request, execute instruments necessary to confirm such assignment. The Airport Authority shall not be obligated to exercise its rights under this paragraph, or any other rights reserved by the Airport Authority hereunder.
4. All Work to be performed under the Subcontract shall be performed in accordance with the requirements of the Contract Documents. The Subcontractor is subject to all of the provisions of the Contract Documents.
5. The Subcontractor agrees to become a party to and be bound by any legal proceedings involving the CMR, the Designer or the Airport Authority to the extent that such proceedings involve any of the rights or obligations of the Subcontractor.
6. In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by any Subcontractor or any dispute as to whether or not the Subcontractor is entitled to additional compensation for any Work requested of it, the Subcontractor shall continue to proceed diligently with performance as required by the CMR. In no event shall delay in the resolution of any dispute excuse prompt performance of the Work.
7. The Subcontractor shall not assign its Subcontract, nor assign any monies due or to become due to it under the Subcontract, without the prior written consent of the CMR and the Airport Authority. Any assignment of the Subcontract or of monies due under the Subcontract made without the written consent of the CMR and the Airport Authority shall be void, and the assignees in such cases shall acquire no rights in the Subcontract or monies.
8. The Subcontractor shall comply with all applicable laws, by-laws, ordinances, codes, regulations and directives of governmental authorities having jurisdiction over the Project and/or the Work.
9. Each Subcontract shall contain a guarantee or warranty of the Work performed thereunder in the same form as the guarantees or warranties of the CMR contained in the Contract Documents. Included in the guarantee or warranty shall be the statement that it shall be enforceable directly by the Airport Authority, if the Airport Authority so elects.

11. The Subcontract shall preserve and protect the rights of the Airport Authority under the Contract Documents with respect to the Work to be performed under the Subcontract.
12. The Subcontractor waives all rights that it may have against the Airport Authority or the CMR for damages caused by fire, theft or other perils covered by any property insurance carried or required to be carried by the Subcontractor, the CMR or the Airport Authority pursuant to the Contract Documents, except such rights as they may have to proceeds of such insurance.
13. If the Subcontractor determines that any portion of the Work on which its work is dependent is not in accordance with the Contract Documents, it shall promptly notify the CMR in writing.
14. The Subcontractor shall perform all Work with labor which will work in harmony with other elements of labor involved in the construction of the Project.

**EXHIBIT KPS**  
**KEY PROJECT STAFF**

**EXHIBIT ALT  
ALTERNATES**

**EXHIBIT OPT  
OPTIONS**

**EXHIBIT ALL  
ALLOWANCES**

**EXHIBIT PRICES**  
**PRICES OF CMR**

**EXHIBITATC**

**Anti-Terrorism Certificate**

The undersigned hereby certifies that it is not an Iran-linked business. I certify I have the requisite knowledge of the undersigned entity to make this certification under penalties of perjury. I understand that in the event the certification is found to be false it may be grounds for termination or rejection of any bid, proposal or contract.

The provisions as stated above are only effective if Iran is a state sponsor of terror as defined under Section 2 of the Divestment From Terror Act 2008 PA 234, MCL 129.292.

Dated: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me came \_\_\_\_\_ who, being duly sworn, deposes and says that he/she has read the foregoing, the same is true of his/her knowledge, information and belief.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_  
Acting \_\_\_\_\_ County

**EXHIBIT STC**

**Supplemental Terms and Conditions**

**EXHIBIT GP**  
**General Provisions**

## EXHIBIT INS

### Required Insurance – Coverage and Amounts

#### Insurance Required by the CMR

All insurance covered under this exhibit must meet the following general requirements:

- a. Carrier must have AM Best rating of A- VII or better
- b. Required for all services unless voided by Airport Authority written approval
- c. Airport Authority must be named as additional insured
- d. Coverage must be primary and non-contributory to Airport Authority and/or managers
- e. 30-Day advance written notice to the Airport Authority in the event of cancellation

\*these provisions do not apply to the Workers' Compensation and Employer's Liability or the Professional Liability insurance sections.

The CMR shall procure and maintain in full force as required by the Contract insurance as follows:

- a. Commercial General Liability Insurance.
  - Each occurrence – \$1,000,000
  - Project Aggregate – \$2,000,000
  - Minimum six (6) Years completed operations
  - Named insured cross liability and severability of interest
  - Contractual liability coverage must be included
  - Policy cannot contain exclusions or explosion, collapse or underground
  - No exclusion or limitation for Airport, Airplanes, or Aviation related work, unless approved by Airport Authority
  - Cyber insurance - \$3,000,000
- b. Business Automobile Insurance.
  - Each Accident – \$1,000,000
  - Aggregate – \$2,000,000
  - Coverage for any Owned, Hired, Non-owned and Leased Vehicles
- c. Umbrella Coverage.
  - CMR, Geo-tech Consultant Each Occurrence –
    - Per Occurrence (excess of CGL including completed operations) – \$5,000,000
    - Aggregate– \$5,000,000
  - All others
    - Per Occurrence (excess of CGL including completed operations) – \$2,000,000
    - Aggregate– \$ 2,000,000

d. Excess Liability.

- Each Occurrence (excess of \$20M Umbrella) including completed operations – \$ to be determined on a per project basis
- Aggregate – amount to be determined on a per project basis

e. Workers Compensation and Employers Liability

- Coverage “A” – Statutory requirements in the State in which the Property is located, to include all areas involved in operations covered under this Agreement
- Coverage “B” – Employer’s Liability, not less than \$ 1,000,000 limit

f. Pollution Liability.

- If approved by the Airport Authority, this policy may be combined with the Professional Liability coverage.
- Per Occurrence – \$2,000,000
- Products-Completed Operations – \$2,000,000
- General aggregate – amount to be determined on a per project basis
- Required for those who conduct work involving disturbance of surface, environmental remediation activities or design environmental remediation or containment services on or for our properties
- Policy must provide coverage for bodily injury, property damage, or cleanup resulting from pollution conditions including mold or other similar fungi arising out of or exacerbated by the work
- No exclusion or limitation for legionella or mold or lead in the policy
- Coverage for owned and non-owned disposal sites
- Transportation coverage for loading and unloading
- Deductible or self-insured retention or no more than \$ 100,000
- The policy shall be maintained during the term of the development of the Project and for a period of at least six (6) years after Completion of the Project
- If written on a claims made basis, policy shall not have a retroactive date or, if a retroactive date is included, such retroactive date shall be prior to the commencement date of agreement

g. Professional Liability Coverage by CMR.

- If approved by the Airport Authority, this policy may be combined with the Pollution Liability coverage.
- CMR
  - \$5,000,000 per occurrence
  - Amount to be determined on a per project basis
- All others

- \$1,000,000 per occurrence
    - Aggregate amount to be determined on a per project basis
  - Deductible of self-insured retention not in excess of \$100,000
  - Minimum six (6) Years post project completion
  - If written on a claims made basis, policy shall not have a retroactive date or, if the retroactive date is included, such retroactive date shall be prior to the commencement date agreement, and the requirement for additional insured can be voided with Airport Authority written approval.
- h. Completed Operations.
- Each claim – amount to be determined on a per project basis
  - Aggregate – amount to be determined on a per project basis
  - Period will be for the period of repose in the state where project is completed
- i. Insurance Required from Sub Contractors.
- CMR shall require each of its sub-contractors and sub-subcontractors to maintain reasonable insurance coverage and limits. CMR shall require indemnity, waive of subrogation, and additional insured status benefitting Airport Authority and their designees as required of contractor unless approved by Airport Authority.
- j. Builder's Risk Insurance. CMR will purchase on behalf of the Airport Authority builder's risk (or floater) insurance in a broad form for which the Airport Authority will reimburse the premium.

The Airport Authority shall review and negotiate policy coverage and limits on a per project basis.

For each project, the CMR will supply to Airport Authority, for Airport Authority's review, copies of all Insurance Policies that will be used for the project.

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