



## **REQUEST FOR QUALIFICATIONS AND PROPOSALS**

**FOR CONSTRUCTION MANAGER AT RISK SERVICES**

**FOR THE CONSOLIDATED RENTAL CAR FACILITY**

**AT THE NORFOLK INTERNATIONAL AIRPORT**

**Advertised: October 3, 2024**

**RFQ-FY25-100-3**

## TABLE OF CONTENTS

### SECTION

1. Solicitation	Pg 3
2. Instructions to Offerors	Pg 4
3. Project Description	Pg 7
4. Construction Manager at Risk Scope of Services	Pg 8
5. Offeror Team Structure	Pg 10
6. Agreement, Terms, & Conditions	Pg 10
7. STEP 1: SOQ Format, Content and Evaluation Criteria	Pg 11
8. SOQ Evaluation Process	Pg 16
9. STEP 2: Contract Terms and Price Proposal	Pg 17
10. Interview Process	Pg 21
11. RFP Evaluation, Negotiation and Selection Process	Pg 21
12. Modifications of Contract Documents	Pg 22
13. Representations, Conditions and Airport Requirements	Pg 22

### Included Exhibits:

RFQ Exhibit A: Agreement Between Owner and Construction Manager at Risk Entity (including Special Security Measures – Terminal Construction, Norfolk International Airport Authority Standard Performance Bond and Norfolk International Airport Authority Standard Payment Bond)

RFQ Exhibit B: Not Used

RFQ Exhibit C: SIDA Badge Application Package

RFQ Exhibit D: Written Determination Regarding use of CMR Procurement method

RFQ Exhibit E: Scoring Matrix

RFQ Exhibit F: Preconstruction Services Fee and Billable Rate Proposal Form

RFQ Exhibit G: Price Proposal Form

RFQ Exhibit H: Concept Drawings

1. **SOLICITATION**

a. **Public Notice**

The Norfolk Airport Authority (hereinafter referred to as “Authority” or “Airport Authority” or “Owner”), acting by and through its Chief Executive Officer, will accept Qualifications and Proposals (two-step process) from a qualified General Contractor or Team (hereinafter referred to as “Offeror”) to provide Construction Manager at Risk (CMR) Services for the Norfolk International Airport (hereinafter referred to as “Airport” or “ORF” or “Authority”) for the Consolidated Rental Car Facility.

**In accordance with Virginia Code 2.2-4343.1, the Airport Authority does not discriminate against faith-based organizations.**

b. **Background Information**

Norfolk International Airport is the major airport serving the communities of Hampton Roads, Coastal Virginia, and the Outer Banks of North Carolina. Allegiant, American, Breeze, Delta, Frontier, Southwest, Spirit, and United offer direct flights to 30 destinations and convenient access to hundreds of cities worldwide.

From its modest beginnings in 1938 to its current status as the region’s primary link to the global air transportation network, Norfolk International Airport continues to grow and adapt to meet ever-changing aviation needs. The footprint of the Airport encompasses approximately 1,000 acres of land with facilities situated in Norfolk and Virginia Beach. Located adjacent to Norfolk Botanical Garden, the Airport is a national role model for reconciling expanding air facilities in a delicate ecological sanctuary.

Norfolk International Airport presently ranks in the top 14% of the country’s airports in terms of passengers served annually, with over 4.5 million passengers and over 75,000 flight operations in 2023. One of the most powerful economic generators in the region, a recent Economic Impact Study estimates that the airport directly and indirectly generated over 17,300 jobs with a payroll of \$775 million, with GDP more than \$1.3 billion and total economic output of \$2.2 billion in 2019.

The Airport Authority is a political subdivision of the Commonwealth of Virginia, and as the Owner of the Airport, it is responsible for all of ORF’s infrastructure (including parking lots, terminals, runways and taxiways), and revenue-generating and commercial development projects, as well as for Airport security, aircraft rescue and firefighting.

**Airport Authority Vision:** Strengthen and grow our region while serving as an industry leader, recognized for our professionalism and excellence.

**Airport Authority Mission Statement:** Connect our community with the world by safely, reliably, and efficiently operating Norfolk International Airport.

The Airport Authority continues a multi-phase process to improve the Airport’s terminals, concourses, and general aviation terminal, in addition to dining and retail additions and upgrades, and in-airport advertising and customer service improvements. Renovations and improvements to the facilities and passenger experience will continue for the next several years. The Airport Authority has updated the Master Plan to include projects that will extend the useful life and value of the Airport to meet the air transportation needs of the region over the next 20 years.

c. **Procurement Process in General:**

**Legal Rationale and Requirements for Public CMR Procurement:**

As a political subdivision of the Commonwealth of Virginia, the Airport Authority is required to procure Construction Management Services in a manner consistent with the requirements of Virginia Law and, in particular, the Virginia Public Procurement Act, § 2.2-4300, et seq. of the Code of Virginia and Chapter 43.1 governing Construction Management and Design-Build Contracting (collectively, "VPPA").

Per Section 5 of the Airport Authority's Procurement and Purchasing Policy document and Chapter 43.1, Va. Code, the Airport Authority has defined the basis for using the CMR delivery method on this Project as outlined in the Determination Regarding use of CMR Procurement method, **Exhibit D**.

**Process:**

The Airport Authority will adhere to the Two-Step Competitive Negotiation Process as set forth in the Airport Authority's Procurement and Purchasing Policy (Revised October 2023).

Step 1: Determination of the Shortlist of Qualified Offerors.

During this step, the Airport Authority's Evaluation Committee will evaluate and score the Statements of Qualifications (SOQs) based on the evaluation criteria outlined herein, using the Scoring Matrix in **Exhibit E**, with a goal of achieving a shortlist of between 3 and 5 of the most Qualified Offerors. Only the Shortlisted Offerors will proceed to Step 2 of the procurement process.

Step 2: Selection of a Construction Manager at Risk Entity

The Airport Authority's Evaluation Committee will evaluate the contract acknowledgments and price proposals submitted by the shortlisted Offerors, will conduct interviews of the shortlisted Offerors, complete the scoring (which may include an adjustment to the previous scoring based upon the presentations/interviews), and rank the Offerors based upon the final scores. After ranking the Offerors, the Evaluation Committee shall (i) conduct negotiations with two or more Offerors submitting the highest ranked proposals; or (ii) should the Airport Authority determine, in writing and in its sole discretion, that only one Offeror is fully qualified or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

2. **INSTRUCTIONS TO OFFERORS**

a. **SOQ Submittal Instructions**

The Airport Authority will receive electronic SOQs via Newforma software up to the date and time specified in the Procurement Schedule. Instructions on how to register for Newforma File Transfer are explained in Subsection (c) regarding the pre-proposal conference.

All SOQs will be timestamped via Newforma software and the Offerors will receive a separate acknowledgement of receipt via email from the Procurement Manager: Gresham Smith: [Ruben.Rivas@greshamsmith.com](mailto:Ruben.Rivas@greshamsmith.com).

Each Offeror shall submit a single electronic copy (PDF) of the SOQ. Offerors that submit more than one SOQ will be disqualified. Any SOQ received at the wrong location or after the deadline specified will not be considered. The Airport Authority will not be responsible for delays in delivery. Hardcopy submittals,

direct email responses or submissions made in any other format will not be accepted. Offerors should not submit any additional audio or video materials, links to external materials, or links to websites, as part of their SOQ. Where page limits are set, failure to follow guidelines may prevent an SOQ from being fully evaluated and the scoring may be impacted.

Offerors must thoroughly and carefully read, review, and understand this RFQ/RFP, including all appendices, attachments, exhibits and any addenda issued. Offerors must comply with all instructions, including the form, format, content, and sequence. SOQs that do not adhere to instructions may be deemed non-responsive or downgraded accordingly in the scoring process, in the sole discretion of the Airport Authority.

**b. RFQ Document Availability**

The RFQ documents including subsequent Addenda will be posted and obtainable from the following locations:

- i. ORF website: <https://www.norfolkairport.com/purchasing>
- ii. The Norfolk Builders & Contractors Exchange: <https://bceva.com/>.
- iii. eVA: <https://eva.virginia.gov/>

**c. Pre-Proposal Conference and Site Tour**

A pre-proposal conference and site tour is scheduled for the time, date and location noted in the Procurement Schedule. **Attendance is highly encouraged, but not mandatory.** The purpose of the conference is to discuss the RFQ requirements and to familiarize each Offeror with the site and the Project as currently progressed.

- i. Interested Offerors must become **Registered Participants in Newforma**:
  1. All participants who attend the pre-proposal conference shall provide contact information which shall include: name, business email address and phone number, on the pre-proposal conference sign-in sheet. By providing this information at the pre-proposal meeting, the attendees will become Registered Participants.
  2. Registered Participants will receive an email correspondence with directions on setting up their Newforma account, which is required to participate in this procurement. Once set up, Registered Participants will receive future Procurement Documentation via Newforma and will be able to transmit their SOQ and proposal documents via the **Newforma Info Exchange** function.
  3. Offerors must become Registered Participants in order to set up their Newforma account and submit their SOQs/proposals. If the Offeror does not attend the pre-proposal conference, it is the responsibility of the Offeror to contact the Procurement Manager, provide the appropriate contact information and become a Registered Participant.
- ii. The pre-proposal conference and site tour is in-person only and virtual participation will not be available.
- iii. The Airport Authority requests that Offerors limit the number of in-person attendees at the conference to five (5) persons. In order to accommodate all Offerors present for the site tour, attendance at the tour may be limited to less than five (5) individuals per Offeror. **Please email the Procurement Manager with the names, telephone numbers and email addresses of the individuals that will attend the site tour so that the Airport Authority can make arrangements for logistics.**

- iv. Offerors are encouraged to email questions in advance of the pre-proposal conference meeting so that those questions may potentially be addressed during the conference.

**d. Submission of Questions**

All questions, requests for clarification or information regarding this RFQ must be made in writing and transmitted via email to the Procurement Manager: [Ruben.Rivas@greshamsmith.com](mailto:Ruben.Rivas@greshamsmith.com) by the date and time noted in the Procurement Schedule. It is the responsibility of each person or Offeror submitting questions or comments to verify the receipt by the Procurement Manager. Neither the Airport Authority, nor Gresham Smith, nor any other Consultant, will answer any questions that are not submitted to the Procurement Manager at the email address noted above.

Responses to written questions, corrections and clarifications to the RFQ/RFP will be made in writing and posted to the locations noted in the RFQ Document Availability Section above and made available to all prospective Offerors in the form of an RFQ addendum.

Offerors shall not rely upon any information from any source other than the RFQ/RFP and Addenda. Specifically, Offerors shall not rely upon any verbal discussion, information or instructions, including those occurring or provided during the pre-proposal conference and site tour. Responses, information, instructions, and discussions that are not addressed through an Addendum are solely for informational purposes and do not change any elements or aspects of the RFQ/RFP document.

**e. Procurement Schedule**

Provided below is the anticipated schedule for the RFQ/RFP. The Airport Authority reserves the right to adjust the schedule and add or remove specific events to meet the needs of the Airport Authority and this Project. Any such changes to the schedule will be issued in an Addendum.

The deadlines for this procurement are currently scheduled as follows:

**Step 1: Request for Qualifications (RFQ) Schedule**

October 3, 2024	Advertisement of RFQ
October 11, 2024	Pre-Submittal Meeting and Site Visit 2:00pm, EDT Airport Main Terminal – Human Resources, Board Room Attendance is highly encouraged
October 22, 2024	Questions Due by 4:00 pm EDT Submit electronically (email) to: <a href="mailto:Ruben.Rivas@greshamsmith.com">Ruben.Rivas@greshamsmith.com</a>
October 29, 2024	Issue final addendum
November 5, 2024	SOQs due by 4:00 pm EDT Submit electronically through Newforma
November 6th – 21st, 2024	Airport Authority Evaluation and Shortlisting

**Step 2: Request for Proposals (RFP) Schedule**

November 22, 2024	Notify Offerors of the Shortlisted Firms
December 20, 2024	Acknowledgement of Contract or Proposed Redline due by 9:00 am EDT; Submit electronically through Newforma
January 7, 2025	Price Proposal due by 2:00 pm EDT Submit electronically through Newforma
January 14, 2025	Interviews, Final Scoring, Ranking and determine whether competitive negotiations needed
January 15-22, 2025	Competitive Negotiations with top-ranked firms, if needed, and recommendation made to CEO
January 24, 2025	Selection by CEO, and Notice of Intent to Award
February 28, 2025	Execute Contract, Preconstruction Addendum, and NTP

**f. Construction Schedule**

September 1, 2025	Notice to Proceed
December 31, 2028	Beneficial Occupancy

**g. Liquidated Damages**

Unless otherwise agreed to by the Owner, the Construction Manager shall pay the Owner liquidated damages of \$1,500 per day for each and every day that Substantial Completion has not been achieved after the Contract Time established in each Guaranteed Maximum Price Amendment. The Construction Manager acknowledges and agrees that liquidated damages are not a penalty, but are a fair and reasonable estimate of the delay damages the Owner is expected to suffer in the event of delay.

**3. PROJECT DESCRIPTION**

The Project consists of constructing a new consolidated rental car facility (ConRAC) and all associated necessary ancillary work. The ConRAC is generally described as a 270,000 square foot parking structure consisting of three levels and a fourth level hard cap. Additionally, a Quick Turnaround facility used by the rental car companies to clean and fuel vehicles will be constructed adjunct to the parking structure. Refer to **Exhibit H** for concept drawings available at the time of posting this RFQ/RFP. Scope is subject to change however, Offerors should anticipate the final project scope to be similar to what is documented in the noted exhibit.

**a. Coordination and Phasing:**

The Airport operates 24-hour a day, 365 days a year, which requires construction to be performed in a manner to minimize impacts to daily operations. The Project will require the Offeror to be knowledgeable in minimizing downtime of operating utilities and planning/phasing/staging the work to limit impact to Airport Operations and maintain a safe passenger experience in and around the facility during the performance of all construction activities. The selected Offeror shall:

- i. Coordinate the work for this project with the Airport Authority's other on-going projects.

- ii. Be responsible for all planning, execution, and means and methods related to the Project phasing in accordance with the requirements of the Contract Documents. Phasing shall be developed and executed in a manner that does not interrupt airport operations and or continuity of facility services except as specifically agreed to by the Owner.
  - iii. Be responsible for providing detailed SUE/Utility investigation efforts, including pot-holing and other all other necessary efforts/investigations, to positively identify the locations of all existing utilities within, and immediately adjacent to, the project, which will be in addition to, and to confirm the information provided in, the existing survey, geotechnical, and SUE documentation which the Airport Authority may provide.
  - iv. Be responsible for identifying and tracing existing systems, and incorporating this information into the Project's phasing to ensure continuity of service, without any unscheduled interruptions to existing systems or services, during the Project's execution.
  - v. Perform all other coordination, planning and phasing activities for the Project required by the Contract Documents.
4. **CONSTRUCTION MANAGER AT RISK (CMR) SCOPE OF SERVICES OVERVIEW.** Capitalized terms throughout this RFQ/RFP are defined in the CMR Contract or intended as a reference to the CMR Contract for additional details.
- a. **Pre-Construction Services** shall include, but are not limited to, the following:
    - i. Recurring constructability, completeness, coordination, clash-detection (BIM), and cost reviews of the project design progress documents, and construction documents / specifications as they are developed by Airport Authority's Consultant.
    - ii. Develop, update and maintain a detailed Project Schedule, at least **monthly**, throughout the Pre-Construction Phase.
    - iii. Lead the development of detailed construction phasing and site logistics plans, in accordance with the Contract Documents, which account for temporary construction and temporary systems required to maintain the safe and continuous 24/7 operation of existing facilities, systems and services by the Airport Authority and its tenants and stakeholders during construction.
    - iv. Analysis and investigation of existing airport infrastructure to aid in the establishment of project phasing and continuity of service.
    - v. Cost Estimating and Cost Control:
      - 1. Preparation of detailed cost estimates **at each stage of the design** that includes all project components. Guaranteed Maximum Price proposals (GMPs) may be awarded for portions of the project, as long as each GMP includes a commitment to the overall construction budget. If the final GMP proposal exceeds the latest estimate, the Contractor shall, at no additional cost to the Airport Authority, continue to evaluate and provide options for completing the project within the budget.
      - 2. Prepare appropriate recommendations to keep the Project on budget as the design evolves (e.g., Make recommendations on an ongoing basis to avoid last minute "Value Engineering" after the work is bid).
      - 3. Review estimates and budget recommendations with the Consultants and the Airport Authority and reconcile the various estimates at each stage of design and monthly thereafter as needed or requested.
      - 4. Prepare ad-hoc cost estimates for elements of the project as necessary to support design decisions and value engineering analysis.
      - 5. Identification of material and labor availability and long-lead items and make recommendations to assist in related cost control and schedule issues.
    - vi. Collaboration with the Airport Authority, and the Authority's Consultants to develop the optimum approach to bidding and subcontracting the construction.



- vii. Outreach to the trade contractors and major suppliers to stimulate interest in the project and ensure sufficient numbers of competitive bids are received for each trade.
  - viii. Prequalification of potential first-tier subcontract bidders.
  - ix. Division of the work scope into manageable trade and scope packages.
    - x. Identification and planning for procurement of long lead items to maintain Project schedule.
    - xi. Management of Subcontractor bidding in accordance with Virginia law, Airport Procurement Policies and Procedures, and the CMR Contract.
  - xii. Tabulating trade package bids, preparation of draft GMP proposal(s) and negotiating final GMP(s) with the Airport Authority.
  - xiii. Draft and Final GMPs shall include detailed construction schedules. The detailed schedules shall be prepared in accordance with the Contract Documents.
  - xiv. Execution of the GMP Construction Contract Addendum(s).
  - xv. All other Pre-Construction services required by the Contract Documents.
  - xvi. Coordinate any Building Information Modeling systems being used by the Offeror and its Subcontractors/subconsultants with the system used by the Airport Authority's Consultants, provide clash detection reports in a timely manner and work with the Authority's Consultants to reconcile all conflicts.
- b. **Construction Services** – Once construction activities are authorized by the Airport Authority, Construction Services shall be performed in accordance with the Contract Documents and shall include, but are not limited to, the following:
- i. Manage, coordinate and supervise all aspects of construction of the Project while maintaining airport operations, security and safety at all times.
  - ii. Furnish at all times an adequate supply of management/supervisory staff, workers and materials to perform the work in an efficient and expeditious manner, which is consistent with the Airport Authority's interests. **Any changes to proposed staffing must be pre-approved by the Owner in writing.**
  - iii. Prepare and submit all applications for permits and approvals required by Authorities having Jurisdiction, make arrangements for and pay all associated fees.
  - iv. Monitor progress of work to meet the project milestone dates and schedule incorporated into each GMP or other Airport Authority work authorization.
  - v. If not submitted with a GMP or other Airport Authority work authorization, prepare and submit baseline Critical Path Method (CPM) for the work, which includes a submittal schedule, for the Airport Authority's approval.
  - vi. Prepare and submit monthly schedule updates and progress reports to the Airport Authority.
  - vii. Prepare and submit project Submittals (as defined in the CMR Contract) for the Airport Authority's approval, and manage the submittal process to ensure all necessary Submittals have sufficient periods for review, incorporating comments, resubmittal (if required) and to allow for sufficient time for the ordering of materials, fabrication / manufacture and delivery.
  - viii. Coordinate any Building Information Modeling systems being used by the Offeror and its Subcontractors/subconsultants with the system used by the Airport Authority's Consultants, provide clash detection reports in a timely manner and work with the Authority's Consultants to reconcile all conflicts.
  - ix. Maintain daily reports/logs and make available to the Airport Authority and the Authority's Consultants.
  - x. Conduct, and prepare minutes for, regular meetings with the Airport Authority and the Authority's Consultants.
  - xi. Prepare and submit Requests for information (RFIs) and maintain an RFI log.
  - xii. Establish and implement a quality control and quality assurance program that includes regular inspections of the Work and compliance with all specifications for testing and inspections.
  - xiii. Prepare and submit monthly detailed pay applications and utilize system for cost control throughout the project.

- xiv. Coordination (as necessary) with airlines, airport tenants, other stakeholders and vendors engaged by the Airport Authority.
- xv. Provide as-built drawings, in the format required by the Airport Authority, as elements of the work are completed.
- xvi. All other Construction Services required by the Contract Documents, and all GMPs or other Airport Authority work authorizations.

## 5. OFFEROR TEAM STRUCTURE

### a. Joint Ventures

Any Offeror that is a joint venture or partnership must be licensed for contracting work in accordance with Virginia Code Section 54.1-1103. Prior to a joint venture engaging in, or offering to engage in, contracting work (i) each contracting party of the joint venture shall be licensed under the provisions of Title 54.1, Chapter 11 or (ii) a license shall be obtained in the name of the joint venture under the provisions of Title 54.1, Chapter 11.

### b. Changes in Key Personnel:

- i. Following submission of an SOQ, Offerors shall not, without the Airport Authority's prior written consent, which may be withheld at the Authority's sole discretion:
  - 1. Delete, substitute or change any team member identified in the SOQ or change the role or scope of work of a team member; or
  - 2. Delete or substitute key personnel or change the role or position of key personnel.
- ii. Should any of the above actions be proposed, the Airport Authority's written consent must be promptly requested via an email to the Procurement Manager, and the Airport Authority must be provided with enough details of the proposed change (including, among other things, the information that is required in this RFQ/RFP) to facilitate the Airport Authority's consideration thereof. The Airport Authority may accept, reject, or seek additional information at its sole discretion. The Airport Authority will base its decision on whether the Offeror still meets the minimum criteria contained in this RFQ/P and whether the Airport Authority would still have selected the Offeror if the change had occurred before submission of the RFQ/P response. Failure to comply may result in disqualification of the Offeror and rescission of award if applicable.

## 6. CMR CONTRACT

### a. CMR Contract

The Awarded Offeror shall execute the Contract Between Owner and Construction Manager at Risk entity (**Exhibit A**) within 30 days of the notice of intended award. Failure to do so may result in the Airport Authority's withdrawal of the notice of intent to award and award to the next-ranked firm.

- b. Offerors must pay particular attention to all the provisions included in the CMR Contract, and include adequate staffing, costs and time in its proposal for compliance with all such provisions, including but not limited to: Special Security Measures – Terminal Construction.

c. Airport Security

The selected Offeror/CMR will be required to comply with the requirements for accessing secure areas, including the airside of the Airport. Offerors must take into consideration the costs and time associated with the Airport's badging requirements in **Exhibit C**, SIDA Badge Application Package.

**7. STEP 1: SOQ FORMAT, CONTENT AND EVALUATION CRITERIA**

a. **SOQ Format**

- i. Offerors must provide electronic submissions via Newforma file transfer to the Procurement Manager. The SOQ shall be provided in a single combined and formatted PDF file.
- ii. The RFQ includes page limits for each tabbed section of the SOQ, as indicated in red for each section below.
- iii. The SOQ should allow the PDF file to be printed on 8-1/2" X 11", however, pages with organizational charts, matrices, or diagrams may be printed on 11"x17" sheets maximum size as indicated in each section below. Offeror shall orient all sheets to read top to bottom and left to right.
- iv. Type size should be no smaller than 11 points for narrative sections, but may be reduced for captions, graphics, footnotes, etc. while maintaining legibility. Non-conforming submissions may be removed from consideration.
- v. Section dividers or tabs should not be utilized. Organize the SOQ with bookmarks.

b. **SOQ Content and Evaluation**

Each SOQ must contain the following sections, organized with bookmarks, headings numbered and labeled as shown to be considered responsive. The Offeror should prepare the requested information in the following sequence, and in accordance with the other requirements of this section, "SOQ Content and Evaluation":

1. RFQ Cover Sheet
2. Introduction letter
3. Table of Contents
4. Minimum Qualifications
5. Required Acknowledgements, Forms and Certifications
6. Organization & Experience
7. Project Team
8. Project Approach
9. Approach to Scheduling & Cost Control

i. **Section 1: RFQ Cover Sheet (maximum 1 page)**

The Cover Sheet shall be marked and identified with the RFQ's name, Procurement Number, date of submission and the Offeror's name.

ii. **Section 2: Introduction Letter (maximum 1 page)**

Submit a letter of introduction for the proposal. The letter must be signed by a person authorized to obligate the Offeror to perform the commitments contained in the proposal. Submission of the letter will constitute (1) a representation by the Offeror that it is willing and able to perform the commitments contained in the proposal and (2) an acknowledgement and certification of compliance with the requirements of the RFP/RFQ.

1. Offeror's name and contact information.

- a. Identify the name and address of the Offeror's legal entity which will contract with the Airport Authority if awarded the CMR Contract for the Project.

- b. Identify the name, address, email address and telephone number of one (1) individual of the Offeror to whom all future correspondence and/or communications related to this RFQ/RFP shall be directed.
- iii. **Section 3: Table of Contents (maximum 1 page)**  
Provide a Table of Contents for the submission which follows the outline set forth in the **SOQ Content and Evaluation**.
  - iv. **Section 4: Minimum Qualifications**  
**Point Value: Pass/Fail (no page limit)**
    1. Provide a copy of the Offeror's current Virginia General Construction Class 'A' license.
    2. In accordance with the Virginia Public Procurement Act, § 2.2-4311.2, Va. Code, please provide the Offeror's identification number issued to it by the State Corporation Commission. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, or as otherwise required by law, shall include in its SOQ a statement describing why the Offeror is not required to be so authorized.
    3. Provide written evidence from a Surety of the Offeror's single project bonding capacity and aggregate bonding capacity at the time of the SOQ submission.
    4. Provide evidence that the Offeror maintains, or has the ability to obtain, the insurance coverages and limits as required in **Article 12 of the Agreement (Exhibit A)**. A copy of the Offeror's current Certificate of Insurance which demonstrates compliance with the requirements, or a letter from the Offeror's Agent or Broker confirming the ability to obtain the required coverages if awarded the contract, will satisfy this requirement.
    5. Provide written evidence from a Surety of the Offeror's single project bonding capacity and aggregate bonding capacity at the time of the SOQ submission. List and describe the Offeror's bonding history over the last five (5) years involving any claim against the Offeror's payment or performance bonds. Explain the circumstances of each, and how each claim was resolved, and if the surety company issuing the bond(s) acted upon or expended funds from the bond issuance to satisfy the claim.
    6. Disclosure of Investigations, Terminations and Claims on Public Projects:  
For all public construction projects, on behalf of a governmental entity, provide the following:
      - a) Identify all instances within the past five years where the Offeror or its team members have failed to comply with or been the subject of an investigation of an alleged violation of state or federal laws related to permitting, environmental, or equal employment regulations, safety issues or contract crime involving fraud, bribery, collusion, conspiracy, or material misrepresentation.
      - b) Identify all Offeror contracts that have been suspended or terminated for cause within the past five (5) years. For each contract, identify the party that initiated the suspension or termination, the stated grounds for, and provide explanations of, the circumstances leading to the suspension or termination.
      - c) Disclose all lawsuits, mediations, arbitrations, issues presented to dispute review boards, and claims filed or raised by or against the Offeror or its team members by or against an owner (except subcontractor payment disputes) over the last five (5) years, specifically identifying:

- i. The project involved.
- ii. The parties involved.
- iii. The nature of the claim(s).
- iv. Case style, number (if applicable), and jurisdiction.
- v. Amounts at issue (both cost and time).
- vi. Disposition or status; specifically disclose whether there was a finding or determination that the Offeror breached the contract or whether liquidated damages were assessed.

For the purpose of these disclosures, "Offeror" shall include any partner, predecessor, successor, or affiliated entity, such as parent, subsidiary, joint venture or guarantor of the Offeror. The Offeror may choose not to include matters that were resolved prior to the time that an affiliate became associated with the parent company, if that affiliate will not be involved in this contract.

The Airport Authority reserves the right to reject any Offeror that includes a lengthy history of claims, terminations or substantiated violations, if the Authority, in its sole discretion, determines that the history indicates the Offeror may not be sufficiently responsible for this complex, public Project. The Airport Authority reserves the right to comprehensively survey public records and other resources for additional information on all relevant matters (whether or not disclosed by Offeror). In addition, the Authority reserves the right to reject any Offeror that willfully fails to disclose any claims, disputes, or other relevant information pertaining to such claims.

If any SOQ contains insufficient information required by this section, the Airport Authority will send a written notice to the Offeror describing the irregularity and the date and time by which it must be corrected. The Airport Authority's Evaluation Committee may conditionally shortlist an Offeror, if, in its sole discretion, it is anticipated that the Offeror will be able to correct the irregularities and submit the information within the timeframe set by the Airport Authority

The purpose of the disclosures is transparency. The Airport Authority understands that claims are common in the construction industry and that (i) not all claims have validity and (ii) not all issues being claimed are of equal concern. A large volume of claims will not necessarily result in disqualification.

**v. Section 5: Required Acknowledgements, Forms and Certifications**  
**Point Value: Pass/Fail**

1. Submit an acknowledgement of all Addenda issued a part of this RFQ/RFP. It is the responsibility of the Offeror to ensure that all addenda have been downloaded from the Airport Authority's website or otherwise received. Failure to submit acknowledgement of each addendum issued may result in the SOQ being deemed non-responsive. Failure to review any addendum will not relieve an Offeror from any obligation contained therein. (1 page maximum)
2. Submit an acknowledgement of the minimum SWAM participation goal. The SWAM participation goal for **Construction Phase services** for this Project is:
  - a. **12.2%** of the contract value for the Construction Phase Services

For the construction phase services, each GMP Proposal must achieve the participation goal that is established for each GMP by obtaining participation of certified companies to perform commercially useful functions for work related to their certification code(s), or include evidence

of good faith efforts made to meet the goal with clear justification as to why goal is unable to be met by the Offeror.

To be considered for the shortlist, an Offeror must demonstrate that it meets the Minimum Qualifications listed above. An SOQ may be considered non-responsive, and not receive further consideration, if the required documentation is not provided with sufficient details to determine whether the Offeror meets the Minimum Qualifications.

vi. **Section 6: Organization, Experience and Capacity**  
**Point Value: Up to 15 points**

1. Provide a brief description of the Offeror's company size and corporate organizational structure. Include a discussion of the Offeror's financial stability, capacity, and resources. (maximum 2 pages)
2. Prior construction management is not required as a prerequisite for award of this contract. The Airport Authority will consider the experience and role of each Offeror on comparable projects. It is preferred that each Offeror demonstrate the successful completion of a minimum of three (3) similar projects within the last ten (10) years. Provide a description of the similar projects, including a summary of the scope of the project, the construction value, the construction delivery method utilized, the role of the Offeror, the roles of the Offeror's proposed staff (and other team members) on these projects, current contact information including telephone number and email address of the owner of the referenced project. (maximum 12 pages)
3. The Airport Authority reserves the right to solicit from all available sources relevant information concerning an Offeror's past performance (whether the project is disclosed or not) and may consider such information in its scoring of this category.

vii. **Section 7: Project Team**  
**Point Value: Up to 20 points**

1. Include an organizational chart with the name, title, and company of the Key Individuals, as defined below, and any proposed subcontractors or subconsultants specifically for the Preconstruction phase of this Project (if any). Identify the individual who will be empowered and authorized to act on behalf of the Offeror during the course of the project. Identify subcontractors and/or subconsultants, if any, proposed for the Preconstruction phase. (maximum 1 page – can be 11x17 and reverse side left blank)
2. The following are considered "Key Individuals" in the Offeror's proposed team, and an overview of some of their primary responsibilities:
  - a. **Project Director**, who shall serve as the single lead for the selected Offeror and shall be the primary point of contact with the Airport Authority. The Project Director shall be responsible for the overall management and delivery of the Project.
  - b. **Preconstruction Manager**, shall be responsible for all Preconstruction services including constructability reviews, value engineering, cost estimating, cost control, outreach and bidding and scheduling all aspects of the Project.
  - c. **Project Scheduler**, shall be responsible for developing and updating the Project Schedule in accordance with the Contract Documents during all phases of Project delivery, including coordination with other ongoing Airport Authority projects and contractors.
  - d. **Construction Project Manager**, shall be responsible for the management and oversight of all construction aspects of the Project.
  - e. **General Superintendent**, shall be responsible for supervising and coordinating all construction field activities of the Project.

3. Provide resumes that describe the experience of the Key Individuals, demonstrating successful experience on projects of similar size and scope.
    - a. If the Project Director and Construction Project Manager have been employed by the Offeror for less than twelve (12) months, provide contact information for two (2) references that can attest to their similar experience (include the name of the reference, name of the project, name of project owner, telephone number and email). (Resumes, including required reference information, maximum of 2 pages per person)
    - b. Include a chart that shows which projects the Key Individuals and proposed subcontractors or subconsultants have worked on together. (maximum 2 pages)
  4. Location & Workload: Identify addresses of the proposed daily working office during pre-construction and proposed daily working office during construction of Key Individuals. Considering all current and projected workloads, describe the anticipated time involvement/commitment and availability of all Key Individuals listed. (maximum 1 page)
- viii. **Section 8: Project Approach**  
**Point Value: Up to 20 points**
1. Provide a comprehensive description of the Offeror's Project Approach that demonstrates a comprehensive understanding of the Project, working at an operating airport, the constraints that apply, and outline ideas, approaches and strategies that can result in a successful project under the current conditions. Describe how the Offeror will engage and collaborate with the Airport Authority and the Authority's Consultants and deliver the Project in an effective, timely, economical and professional manner. (Maximum 6 pages)
  2. Provide staffing plans for both Preconstruction and Construction services. Include both internal staff as well as proposed subcontractors or subconsultants, if any, for the Preconstruction services and explain how they will be utilized to execute the Project successfully and efficiently. Do not include any proposed design-assist subcontractors at this time. (Maximum 4 pages)
  3. Describe the Offeror's safety and security program as it will be applied to this Project. (Maximum 2 pages)
  4. Describe in detail the approach to providing quality control services throughout the Preconstruction and Construction phases. (Maximum 2 pages)
  5. Describe the proposed approach to meeting or exceeding the SWAM participation goal, and how it plans to mentor and assist certified firms to ensure their success on the Project (Maximum 2 pages)
  6. Describe the Offeror's approach to specific site access, site logistics and site management, and include a discussion of the challenges and proposed solutions for this Project, including Maintenance of Traffic (MOT) and phasing plans, if necessary. (Maximum 3 pages)
  7. In addition to the information provided in Section 4, for this scored Section:
    - a. Identify the maximum level of Commercial General Liability coverage that Offeror can obtain through its corporate policy, as well as the maximum coverage that is available for this specific Project.
    - b. Describe the proposed or recommended risk management and insurance coverage methodology for this Project, including your recommended plan for insuring subcontracted

work and your approach for assisting subconsultants and subcontractors (i.e., reduction in required coverage for subconsultants and subcontractors to a range commensurate with their *capability to procure such coverage and balancing risk management with the Airport Authority's goal of maximizing participation*). (Maximum 2 pages)

- c. Provide a narrative describing any proposed plan for bonding subcontracted work. Indicate which trades that would require bonds or whether a program like Subguard is proposed. Provide the anticipated Subguard rate, if applicable. (Maximum 1 page)
- d. The Airport Authority may be amenable to utilizing a Contractor Controlled Insurance Program (CCIP) to meet the requirements of this RFQ. The CCIP coverage options and pricing will **not** be considered in the shortlisting and final award criteria. Following award, the Airport Authority will determine whether to allow a CCIP and, if so, will elect the coverage it considers to be in its best interest.

ix. **Section 9: Approach to Scheduling & Cost Control**  
**Point Value: Up to 10 Points**

1. Describe the Offeror and Key Individuals' past successes in meeting established schedules and budgets for projects of similar size and complexity as a general contractor or construction manager, providing project examples with the bid amount or GMP value and final completed construction cost, and initial scheduled and actual completion dates. (Maximum 2 pages)
2. Describe the proposed approach to cost control for this Project, during pre-construction, development of the GMP(s), management of buy-out and material and labor cost escalation risk, and construction of the Project. (Maximum 2 pages)
3. Describe the Offeror's proposed approach to the competitive procurement of subcontractor trades and materials in accordance with the requirements of the CMR Contract/Contract Documents and development of the GMP(s) in accordance with the construction schedule. (Maximum 2 pages)
4. Describe the technology the Offeror will use to ensure cost control, risk management, contingency management, subcontractor bidding and schedule management. (Maximum 2 pages)
5. Submit a statement that the Offer has reviewed and understands the Airport Authority's schedule for this Project and, if selected, the Offeror will commit to achieving the schedule. If a commitment cannot be made, describe the anticipated challenges with the schedule and propose durations for major design and construction activities. Note that a fifteen (15) business day period is required for execution of a GMP by the Airport Authority. (Maximum 3 pages)

8. **SOQ Evaluation Process**

- a. The Evaluation Committee shall consist of at least three members, including employees of the Airport Authority and a Virginia licensed design professional under its employ or contract.
- b. Each Evaluation Committee member will independently evaluate each timely submitted SOQ to determine whether the SOQ meets the Minimum Requirements.
- c. Each Committee member will then independently score the SOQs which met the Minimum Requirements, using the Scoring Matrix and the criteria described herein.
- d. The Evaluation Committee will then compile each member's scores and develop a shortlist of three to five of the most qualified Offerors. Depending upon the volume of submitted SOQs and the evaluation of the



qualifications, the shortlist may include a minimum of one DSBSD-Certified Small Business that in the opinion of the Evaluation Committee meets the Minimum Requirements.

- e. Evaluations will focus on relative strengths, weaknesses, deficiencies, and risks associated with the SOQ.
- f. The Airport Authority reserves the right to obtain clarification or additional information from any of the submitting Offerors or from any other source.
- g. At least thirty (30) days prior to the date established for the submission of price proposals, the Airport Authority will advise in writing which Offerors are shortlisted, the date and time for the shortlisted Offerors proposal submissions and date and times for shortlisted Offerors Interviews.

## 9. **STEP 2: CONTRACT TERMS AND PRICE PROPOSAL**

Only Shortlisted Offerors will be invited to participate in Step 2 of the selection process which will consist of two separate submissions:

- Submission 1 – The Offeror's Contract Acknowledgment
- Submission 2 – The Offeror's Price Proposal

Shortlisted Offerors should not provide any cover letters, tabs, section dividers, cover letters or other information other than what is requested in the sections below for each submission.

Shortlisted Offerors shall submit each submission via Newforma File Transfer to the Procurement Manager identified above, on or before the applicable submission date and time identified in the Procurement Schedule.

Failure to submit this information by the deadlines will result in the Offeror's disqualification from the shortlist.

### a. **Submission 1 – The Offeror's Contract Acknowledgement** (No Page Limit This Section. Must use CMR Contract provided). **Point Value: Up to 5 Points**

1. The Offeror shall submit either:
  - a. An acknowledgement and acceptance of the CMR Contract without any proposed edits or modifications, or
  - b. A "redlined" version of the CMR Contract which contains the Offeror's proposed edits or modifications to any provisions to which it has any objection.
2. Submission 1 Scoring
  - a. Offerors that submit an unconditional statement that the Offeror has reviewed the CMR Contract and that, if selected, will execute the contract without substantial modification, will be scored 5 points.
  - b. Offerors that submit a proposed redlined contract will be scored based upon the acceptability to the Airport Authority, in its sole discretion, of the Offeror's proposed edits or modifications to the CMR Contract provisions. For example,
    - minor acceptable proposed revisions may receive a score of 5,
    - a large volume of substantive proposed revisions that the Airport Authority may find acceptable with some further modification may receive a score of 1,
    - a redline with only one substantive proposed revision that is unacceptable to the Airport Authority may receive 0 points for this category.
  - c. Any proposed revisions to the following CMR Contract provisions will not be accepted and will be disregarded by the Airport Authority:

- i. The definition or application of the CMR Fee, or the re-categorization, of any cost item, is not negotiable as the pricing for all Offerors must be based on comparable terms.
      - ii. The CMR's Minimum Insurance Requirements found in **Article 12 of the Agreement** are not negotiable, as the pricing for all Offerors must be based on comparable terms, except that the selected CMR may request a higher deductible or self-insured retention amount in accordance with the CMR Contract.
    3. The Airport Authority reserves the right to disqualify an Offeror if a proposed revision, or the revisions cumulatively, materially modifies the CMR Contract in a manner which the Airport Authority, in its sole discretion, finds unacceptable.
    4. Proposed revised CMR Contract terms, if any, will be negotiated during competitive negotiations (after scoring and before contract execution). Any revisions which are not identified by the Offeror in response to this section will not be considered by the Airport Authority, and the Authority's failure to negotiate any such terms shall not be an excusable reason for the Offeror not to execute the CMR Contract. The Airport Authority's scoring of any Offeror's proposed revisions shall not be interpreted as such proposed revisions are acceptable to the Airport Authority. If the parties cannot reach an accord on the final terms of an acceptable CMR Contract, in its sole discretion, the Airport Authority may elect to terminate the negotiations and commence negotiations with the next-ranked Offeror.
- b. **Submission 2 – The Offeror's Price Proposal (No Page Limit This Section. Must use required forms).**  
**Point Value:** Up to 30 points
  1. The Offeror shall submit a complete Price Proposal prepared and presented in accordance with the requirements and instructions below, as well as the other requirements of this RFQ/RFP.
    - a. Shortlisted Offerors must complete all sections of the Price Proposal forms (**Exhibits F and G**). The Offeror's Price Proposal may be considered non-responsive and may be rejected if, in the Owner's sole discretion, the Offeror's Price Proposal contains any material omissions, alterations of form, additions not called for, conditions, exclusions, limitations, unauthorized alternate proposals or other irregularities of any kind.
    - b. **Preconstruction Services Fee**
      - i. Submit a not-to-exceed fee for Preconstruction Services in the space provided in **Exhibit G**, that matches the total sum from the **Exhibit F** spreadsheet "Preconstruction Services Fee and Billable Rate Proposal." On **Exhibit F**, list the proposed Preconstruction staff. If an individual is not known for a given role/position, list the name as TBD for the given role/position.
        1. For the preparation of **Exhibit F**, assume a duration of 9 months for the purpose developing the pre-construction services fee. If needed, the parties may negotiate an extension of the pre-construction phase using the information submitted in Exhibit F.
      - ii. The Offeror shall list all roles/positions that are necessary to provide the Preconstruction services. The roles/positions listed in **Exhibit F** must include, as a minimum, the positions listed in the staffing plan provided by the Offeror in the SOQ and must capture all the necessary Preconstruction staff hours.

- iii. For each role/position, include a proposed billable rate for the duration of the Preconstruction services (i.e., no rate increases will be considered or allowed by the Airport Authority). Each proposed billable rate shall be a fully burdened rate which includes the following for the full duration of the Preconstruction services:
  1. All wages, salaries and bonuses, including any annual/geographical cost of living adjustments, pay increases, etc.,
  2. All employee benefits and payroll taxes (e.g., employer contributions for: pension/retirement plans, health, dental and vision insurance, FICA, FUTA and SUTA),
  3. All separately non-reimbursable expenses for required for the Preconstruction staff to perform their Preconstruction duties equipment, or for the Offeror to perform/provide the necessary Preconstruction services (e.g., general expenses, travel expenses, relocation expenses, personal protective equipment, all communications and information technology equipment and service plans, computers, ipads, cellular phone and service and office telephones, vehicles and transportation, office supplies, license costs).
- iv. Fully complete the Project Management Staff table **Exhibit F** including the following for each proposed role/position: (1) the role's/position's title, (2) the proposed staff's name, (3) the proposed staff's company, (4) the proposed staff's primary work location during Preconstruction (city and state), (5) the proposed Billing Rate, (6) the proposed estimated hours by month, (7) the total proposed estimated hours, and (8) the total cost.
- v. In the Project Management Staff table of **Exhibit F** include subtotals for the proposed estimated hours and cost.
- vi. In the Project Management Reimbursable Costs table of **Exhibit F** include a complete listing and tabulation of all allowable, *non-labor* reimbursable proposed expenses, including (1) a description of the proposed expense, (2) the estimated quantity, (3) the unit of measure, (4) the proposed unit price, (5) the estimated line item total costs. The allowable, non-labor reimbursable expenses are identified in the CMR Contract Article 8, Direct Cost of The Work. Note, in no instances shall any software, technology, or software/technology license/usage costs be separately reimbursable.
- vii. In the Project Management Reimbursable Costs table of **Exhibit F** include a total for the estimated reimbursable costs.
- viii. Include a proposed **lump sum** "CM Fee For Preconstruction Phase" on the Pre-construction summary table at the bottom of **Exhibit F**. This Fee shall include overhead, profit and any other expense not separately reimbursable under the Contract.
- ix. Include the total from the Pre-construction summary table at the bottom of **Exhibit F** on Line A of **Exhibit G**.
- c. **Preconstruction Insurance Fee:** On Line B of the Price Proposal Form **Exhibit G**, Offerors shall propose a flat fee for the minimum insurance requirements for the preconstruction phase.
- d. **Subtotal for Preconstruction Phase:** Offerors shall total the proposed values for Lines A and B on Exhibit G and enter this value on Line C in Exhibit G. **This Line represents the**

**only compensation to be paid for Pre-Construction phase services. Any expense that is not specifically listed in Exhibit F and included on Exhibit G will not be paid.**

e. **Construction Services Fees:**

- i. CMR Fee: Offerors shall propose a CMR Fee in a percent cost format and include this proposed rate on Line D of **Exhibit G**. The proposed CMR Fee:
  1. Will be applied to the cost elements specifically identified in the CMR Contract as reimbursable, **with the exception that it will not be applied to the insurance and bond costs/fees/rate**; and,
  2. Is full compensation for all the Offeror's Construction Phase expenses and costs which are not expressly identified as reimbursable in the CMR Contract and are not already included in the billable rates, including, without limitation, general and administrative (G&A) costs, the CMR's profit, all home office, branch office, all labor and non-labor overhead, travel, staff relocation and lodging expenses; and
  3. Will be fixed for the duration of the Project; and
  4. Will **NOT** be applied to Preconstruction Services.
- ii. Performance and Payment Bond Fee: Offerors shall propose a Performance and Payment Bond Fee (i.e., markup rate) and include this proposed rate on Line E of in **Exhibit G**. Submit as a percentage of the Direct Cost of the Work (DCOW) and General Conditions.
- iii. For the purpose of the Price Proposal, assume staffing costs for the Construction Phase will be paid per the CMR Contract as actual costs and capped labor burden. For the Construction Phase, the parties will negotiate the staffing costs with the GMP(s) as (i) Not to Exceed values (based on billable rates and estimated hours), (ii) lump sum amounts with a payment schedules, or (iii) as some combination thereof. During the negotiation of the staffing costs for the Construction Phase, the Airport Authority will require supporting documentation which demonstrates how each rate was calculated for existing and new positions.
- iv. On Line F of **Exhibit G**, Offeror's shall propose a rate for construction phase insurance based upon the minimum requirements stated in **Article 12 of the Agreement (Exhibit A)**. Submit as a percentage of the Direct Cost of the Work (DCOW) and General Conditions.
- v. Offeror's shall complete the various CCIP scenarios on the Price Proposal Form **Exhibit G**. The CCIP coverage options and pricing will **not** be considered in the final award criteria. Following award, the Airport Authority will determine whether to allow a CCIP and, if so, will elect the coverage it considers to be in its best interest

f. **Submission 2 Scoring**

- i. The Airport Authority will determine the lowest, responsive price for both phases (Preconstruction and Construction) in **Exhibit G** and will score the Offeror with the lowest, responsive proposed price with the maximum points. Other Offerors' proposals will be scored based upon the proportion of their price to the lowest proposed price.

## 10. INTERVIEW PROCESS

- a. The Evaluation Committee will schedule a presentation and interview session with each Shortlisted Offeror. The presentations and interviews may expand upon and/or clarify any questions or topics from the SOQ and additional information obtained.
- b. The proposed Key Individuals who will lead the Offeror's preconstruction and construction teams and will have day-to-day responsibility for each phase of the Project, will be expected to attend and lead their respective portions of the Offeror's presentation.
- c. The interviews will address the Offeror's qualifications, approach to this Project, ability to furnish the required services and any other questions that may be included with the shortlist notification or that the Airport Authority or the Authority's Consultants may have.
- d. Interviews will include up to a 40-minute presentation by the Shortlisted Offeror, with an additional 30 minutes for questions from the Evaluation Committee and the Airport Authority's staff and Consultants.
- e. Copies of presentations (if any) must be furnished to the Airport Authority at the start of the presentation, including providing an electronic copy in PDF format to the Procurement Manager on a USB drive.
- f. Offerors may not attend the interviews of their competitors. The Airport Authority may allow its staff and consultants to attend the presentations and interviews.

## 11. RFP EVALUATION, NEGOTIATION AND SELECTION PROCESS

- a. After completion of the interview process, the Airport Authority's Evaluation Committee will evaluate each Offeror, comparatively against each other, will complete the scoring of the contract acknowledgement and may adjust the scores for any criterion, utilizing the Scoring Matrix provided as **Exhibit E**.
- b. The Evaluation Committee will tally the scoring and calculate the total cumulative score for each Offeror. The Price Proposals will be scored after the scoring of all non-price criteria is completed. The Evaluation Committee will rank each Offeror based on its final total score.
- c. After the Offerors are ranked, the Evaluation Committee will determine whether to:
  - i. Conduct negotiations with two or more of the top-ranked Offerors; or
  - ii. Negotiate with the one Offeror that is clearly more highly qualified than the others.The Airport Authority will document the basis of this determination and notify the Shortlisted Offerors.
- d. If two Offerors are selected for negotiations, the Airport Authority will request a Best and Final Offer (BAFO) in writing from each Offeror. The Evaluation Committee will review the BAFOs and recommend the selection of the CMR to the Chief Executive Officer, or his or her designee, based on its evaluation of which Offeror proposes the best value. If only one Offeror is selected for negotiations, negotiations will continue until the Chief Executive Officer is satisfied that the Price Proposal is acceptable.
- e. Award, if made, will be to the Offeror who has been determined by the Airport Authority, in its sole discretion, to have provided the overall best value in response to the RFQ/RFP.
- f. After the Chief Executive Officer has selected the CMR, the Airport Authority will issue a notice of intent to award to the selected CMR and inform the Shortlisted Offerors of the selection.
- g. If the selected CMR fails to fully execute the CMR Contract and provide all required documents within 30 days of receipt of the notice of intent to award, or such later date as the Airport Authority may authorize, the Airport Authority may enter into negotiations with the next-ranked Offeror.
- h. If the parties are unable to reach a mutually acceptable CMR Contract, the Airport Authority may terminate negotiations with the selected CMR and initiate negotiations with the next highest ranked Offeror until Airport Authority either successfully negotiates an agreement or cancels the procurement.
- i. The CMR Contract is not binding on either party until the agreement is fully executed by both parties.

## 12. Modification of Contract Documents.

- a. The Airport Authority may, at any time after selection of the CMR, conduct additional negotiations with the selected CMR regarding any issues pertaining to details of contract performance, methods of construction, timing, and other matters that may affect cost or quality, provided that the general work scope remains the same.
- b. The Airport Authority may make such modifications to the form contract documents as it may determine, in the exercise of its sole discretion, to correct any inconsistencies, ambiguities, or errors that may exist, and to clarify contract terms, including technical requirements and specifications, if any.

## 13. Representations, Conditions and Requirements

- a. COMMUNICATION WITH AIRPORT AUTHORITY STAFF AND BOARD OF COMMISSIONERS AND REQUESTS FOR INTERPRETATION OF CLARIFICATION
  - i. All communications, of any nature with respect to this RFQ, shall be addressed in writing to the Procurement Manager identified earlier in this RFQ.
  - ii. Offerors must not contact members of the Airport Authority Board of Commissioners, the Evaluation Committee, Authority staff, the Authority's Consultants advising them on the Project or this RFQ/RFP or anyone associated with the RFQ to discuss or ask questions about this Project, the RFQ/RFP, or any SOQ/proposal, or the contents thereof, with the only exception to this being the Procurement Manager identified herein in accordance with 13.a.i above.
  - iii. **Improper contact with Airport Authority personnel or others listed in subsection (ii) above may result in disqualification of Offeror.**
  - iv. Unless specifically provided otherwise, communication limits do not apply to:
    1. Communications with the Airport Authority General Counsel or other retained counsel;
    2. Oral communications at the Pre-Solicitation Conference;
    3. Oral communications during an interview;
    4. Communications with the designated parties during any negotiations;
    5. Statements made by any speakers during any duly noticed public Board meeting; and
    6. Communications relating to bid protests made in accordance with the Airport Authority Bid Protest Policy.
- b. DUTIES AND OBLIGATIONS OF OFFERORS IN THE RFQ/RFP PROCESS
  - i. Each Offeror shall carefully examine the site of the Work, existing records, and fully inform themselves as to all conditions, requirements and specifications of this RFQ/RFP before submitting an SOQ and Price Proposal.
  - ii. Offerors must perform their own evaluation and due diligence verification of all information and data provided by the Airport Authority regarding this RFQ/RFP.
  - iii. The Airport Authority makes no representations or warranties regarding any information or data provided.
  - iv. Offerors shall promptly notify the Procurement Manager in writing to report any ambiguity, inconsistency or error in this RFQ/RFP. Failure to notify will constitute a waiver of claim of ambiguity, inconsistency or error which existed in the RFQ/RFP.
  - v. By submitting an SOQ, the Offeror represents to the Airport Authority that if it is selected, it will execute a CMR Contract and that it has adequately investigated the existing site conditions and the existing Owner records to allow the Offeror to properly perform the work. In addition, by submitting an SOQ/Proposal, the Offeror certifies that it is fully informed of the conditions to be encountered, of the character, quality and general quantities of work to be performed, labor conditions, and materials to be furnished and has included in its

proposal all items necessary for the proper execution and completion of the work. The selected Offeror shall not be relieved of its obligation to furnish all material, equipment, labor, and services necessary to carry out the provisions of the contract and to complete the contemplated work for the consideration set forth in its Price Proposal by reason of having failed to inform itself with respect to those matters.

c. NO COLLUSION, BRIBERY OR CONFLICT OF INTEREST

- i. By responding to this RFQ/RFP, the Offeror is deemed to have represented and warranted that its RFQ/RFP submittal is (i) not made in connection with any competing Offeror submitting a separate response to this RFQ/RFP and (ii) in all respects fair and without collusion or fraud.
- ii. Furthermore, the Offeror is deemed to have represented and warranted that it, any of its affiliates or subconsultants/subcontractors, or any employee of any of the foregoing, has not bribed, nor attempted to bribe, any Airport Authority staff, Authority Board Member, or other government official at the local, state or federal level, in connection with this RFQ/RFP.
- iii. Offerors shall comply with all applicable Airport Authority policies and procedures and applicable legal requirements.

d. PUBLIC RECORDS.

- i. Upon receipt by the Airport Authority, each SOQ and Proposal becomes the property of the Airport Authority and is considered a Public Record except for material that qualifies as "Trade Secret" or other confidential information under Virginia law.
- ii. SOQs will be reviewed by the Procurement Manager, as well as other Airport Authority staff members and Authority Consultants. The SOQs and proposals will be made available to the public in accordance with Virginia's Freedom of Information Act and Virginia's Public Procurement Act.
- iii. To properly designate material as a Trade Secret, each Offeror must meet the requirements of § 2.2-4342.F., Va. Code regarding submission of trade secrets and take the following precautions:
  1. Each Offeror is to submit a single electronic copy (in PDF format) of the SOQ. Any Trade Secrets submitted by the Offeror should be segregated within the PDF document and have a cover sheet denoting "Following pages contains Trade Secrets – Confidential and Proprietary Information – Do Not Disclose Except for the Purpose of Evaluating this Qualification Package."; and the same trade secret / confidentiality designation should be watermarked on each page of the PDF file that contains Trade Secret materials.
  2. By submitting an SOQ and/or proposal, each Offeror agrees that the Airport Authority may reveal any Trade Secret materials contained in such response to the Procurement Manager, all Authority staff, and other Authority Consultant staff or individuals, involved in the evaluation process and to any outside Company or third parties who serve on the Evaluation Committee or who are engaged by the Airport Authority to assist in the selection process.
  3. Furthermore, by submitting an SOQ and/or proposal, each Offeror agrees to defend, indemnify and hold harmless the Airport Authority and each of its employees and agents from all costs, damages and expenses incurred in connection with refusing to disclose any material that the Offeror has designated as a Trade Secret.
  4. Any Offeror that designates its entire SOQ or proposal as a trade secret will be disqualified as non-responsive.
  5. Labeling information as "proprietary" or "confidential" or any other designation of restricted use shall not protect information from release if required or deemed appropriate by the Airport Authority under applicable policies, open meeting laws, or public records laws.

e. COST OF SOQ/PROPOSAL PREPARATION

- i. The Airport Authority accepts no liability for the costs and expenses incurred by Offerors responding to this RFQ/RFP, in (1) performing all necessary investigations/due diligence associated with its response, (2) preparing responses for clarification, (3) attending interviews, (4) participating in contract development or negotiating sessions, or (4) attending meetings and presentations required for the contract approval process.
- ii. Each Offeror that enters the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that the Offeror cannot make any claims whatsoever for the reimbursement from the Airport Authority for the costs and expenses associated with the procurement process.
- iii. The RFQ/RFP does not commit the Airport Authority to pay any costs incurred by the Offeror prior to the execution of a final contract.

f. THE AIRPORT AUTHORITY'S RESERVED RIGHTS AND OPTIONS

- i. The Airport Authority reserves the following rights, which may be exercised at the Airport Authority's sole discretion:
  1. To supplement, amend, substitute, withdraw, cancel, postpone, or otherwise modify this RFQ/RFP at any time;
  2. To request substitutions of any Key Individuals of the selected Offeror(s), including other staff and subconsultants/subcontractors not identified as Key Individuals;
  3. To contact any Offeror or Offeror's team member to obtain additional information, including but not limited to experience, qualifications, abilities, equipment, facilities, references, and financial standing;
  4. To conduct due diligence with respect to the qualifications and experience of each Offeror and all Key Individuals and Subconsultants/Subcontractors;
  5. To waive any defect or irregularity in any SOQ/Proposal received, or any technicalities or informalities;
  6. To correct any obvious mathematical errors in a price proposal or request any additional information that may be needed to fully understand a proposal;
  7. To share the SOQs and proposals with the Airport Authority's employees other than the Evaluation Committee and other third parties engaged by the Airport Authority to participate in the selection process;
  8. To award all, none, or any part of the scope of work set forth in this RFQ/RFP, with or without re-solicitation;
  9. To reject any or all SOQ(s)/proposals submitted; and
  10. To re-advertise for Qualifications using this RFQ/RFP or a different RFQ/RFP or solicitation.

g. NO LOBBYING

The Offeror certifies that it has not and will not pay any person(s) or organization(s) to influence or attempt to influence an employee, Consultant or Airport Authority Board Commissioner in connection with obtaining a Contract under this RFQ/RFP.

h. COMPLIANCE WITH ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY LAWS AND REGULATIONS

Offerors must comply with all applicable federal, state and local anti-discrimination and equal opportunity statutes, regulations and executive orders.

i. TITLE VI SOLICITATION NOTICE

The Airport Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this invitation, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and



no businesses will be discriminated against on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

j. **REASONABLE ACCOMMODATIONS**

If the Offeror requires any reasonable accommodation for any type of disability in order to participate in this procurement, please contact the Airport Authority as soon as possible.



**RFQ EXHIBIT A– AGREEMENT BETWEEN OWNER AND CONSTRUCTION  
MANAGER AT RISK ENTITY**



***AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGEMENT AT RISK  
ENTITY (“CMR”)***

**PROJECT NAME: CONSOLIDATED RENTAL CAR FACILITY AT THE NORFOLK  
INTERNATIONAL AIRPORT**

**RFQ-FY25-100-3**

**TABLE OF CONTENTS**

ARTICLE 1 THE PROJECT TEAM AND EXTENT OF AGREEMENT.....2

    1.1 Relationship of the Parties .....2

    1.2 The Project Team.....2

    1.3 Extent and Interpretation of Agreement. ....2

    1.4 General Warranties and Representations. ....3

    1.5 Independent Contractor.....5

    1.6 Definitions: The following terms shall have the meanings specified herein .....5

ARTICLE 2 CMR’S SERVICES .....10

    2.1 CMR Services .....10

    2.2 General Services .....10

    2.3 CMR’S Staff and Supervision of the Work .....20

    2.4 Jobsite Facilities.....22

    2.5 Administrative Records .....22

    2.6 Preconstruction Services.....23

    2.7 Construction Phase.....30

    2.8 Project Closeout.....39

ARTICLE 3 OWNER’S RESPONSIBILITIES .....42

    3.1 Owner’s Authorized Representative (OAR).....42

    3.2 Consultant Agreements.....43

    3.3 Site Survey and Reports.....43

    3.4 Lines of Authority.....43

    3.5 Permitting and Code Inspections .....43

ARTICLE 4 PERFORMANCE OF WORK AND SUBCONTRACTS .....43

    4.1 Performance of Work by CMR.....43

    4.2 Investigations and Utilities .....43

    4.3 Field Conditions.....44

    4.4 Self-Performance of the Work .....44

    4.5 Owners Right to Disapprove Subcontractor or Supplier .....45

    4.6 No Third-Party Beneficiary or Relationship.....45

    4.7 Required Subcontract Provisions.....45

    4.8 Responsibilities for Acts and Omissions .....47

    4.9 Not Used .....47

    4.10 Labor Harmony.....48

    4.11 Use of Site and Coordination with Others .....48

    4.12 Separate Contractors .....48

    4.13 Cutting and Patching.....49

    4.14 Cleaning Up .....49

    4.15 Access to the Work.....49

ARTICLE 5 SCHEDULE AND COMPLETION .....	50
5.1 Time .....	50
5.2 Project Schedule.....	50
5.3 Liquidated Damages .....	50
5.4 Progress of the Work .....	51
5.5 Surety Prosecution of Work.....	51
5.6 Substantial Completion.....	51
5.7 Partial Occupancy or Use.....	52
5.8 Final Completion and Final Payment .....	53
ARTICLE 6 GUARANTEED MAXIMUM PRICE (“GMP”), CONSTRUCTION CONTINGENCIES AND ALLOWANCES .....	55
6.1 Guaranteed Maximum Price Proposal .....	55
6.2 Scope of GMP Work.....	55
6.3 GMP Proposal Contents.....	55
6.4 GMP Negotiations and Approval.....	57
6.5 Accurate Costs .....	57
6.6 Guaranteed Maximum Price .....	58
6.7 Contingency. ....	58
6.8 Allowances.....	59
ARTICLE 7 GENERAL CONDITIONS COSTS .....	60
7.1 General Conditions Costs Defined.....	60
7.2 Preconstruction Services Compensation.....	60
7.3 Construction Phase.....	61
ARTICLE 8 DIRECT COST OF THE WORK .....	61
8.1 Direct Cost of the Work.....	61
8.2 Cost Not to be Reimbursed.....	63
8.3 Discounts and Penalties .....	63
ARTICLE 9 CMR FEE.....	64
9.1 CMR’s Fee .....	64
ARTICLE 10 CHANGES IN THE WORK (CONTINGENCY REQUESTS, CONTRACT MODIFICATIONS), DELAY AND FORCE MAJEURE EVENTS .....	64
10.1 Contract Modifications .....	64
10.2 Request for Contingency, Time Extension or Contract Modification .....	64
10.3 Amount of Contract Modification .....	65
10.4 Construction Change Directive.....	65
10.5 Force Account Procedures. ....	65
10.6 Itemized Accounting.....	66
10.7 Unit Prices.....	67
10.8 Owner Changes to the Work/Owner Caused Delay .....	67

10.9	Unforeseen Conditions.....	67
10.10	Requests For Additional Time.....	67
10.11	Minor Changes In The Work.....	68
10.12	Emergencies.....	68
10.13	Hazardous Waste Removal.....	68
10.14	Force Majeure.....	68
10.15	Damages For Delay.....	70
ARTICLE 11 PAYMENTS TO THE CMR.....		71
11.1	Payment Applications.....	71
11.2	Progress Payments.....	74
11.3	Stored Materials.....	75
11.4	Retainage.....	76
11.5	Subcontractor Payments.....	77
11.6	Final Payment.....	79
ARTICLE 12 BONDS, INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION ..		79
12.1	Bonds.....	79
12.2	Indemnity.....	80
12.3	CMR's Insurance.....	82
12.4	Property Insurance.....	96
ARTICLE 13 SUSPENSION OF WORK; TERMINATION OF THE AGREEMENT.....		98
13.1	Suspension of Work By Owner For Cause.....	98
13.2	Suspension of Work By Owner Without Cause.....	98
13.3	Termination by Owner for Cause and Owner's Right to Perform CMR's Obligations.....	99
13.4	Termination by Owner Without Cause.....	102
13.5	Termination by the CMR.....	103
ARTICLE 14 ASSIGNMENT.....		103
ARTICLE 15 CLAIMS AND REMEDIES.....		103
15.1	No Guarantee of Work.....	103
15.2	Claims Process.....	103
15.3	Jurisdiction.....	105
15.4	Jury Trial Waiver.....	105
15.5	Cumulative Remedies.....	105
15.6	Member Protection.....	105
ARTICLE 16 PROJECT RECORDS, AUDIT RIGHTS AND COPYRIGHTS.....		106
16.1	CMR's Project Records, Access to Project Records, Owner's Audit Rights.....	106
16.2	Confidentiality.....	107
16.3	Sensitive Security Information.....	108
16.4	Ownership, Patents, Trademarks, and Copyrights.....	108

16.5	Public Records .....	110
ARTICLE 17 MISCELLANEOUS PROVISIONS.....		111
17.1	Survival of Provisions.....	111
17.2	Severability .....	111
17.3	No Waiver.....	111
ARTICLE 18 COMPLIANCE WITH LAWS AND REGULATIONS .....		111
18.1	Title VI.....	113
18.2	EEOC .....	113
18.3	Nondiscrimination.....	113

EXHIBITS THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN

EXHIBIT A	PUBLIC NOTICE
EXHIBIT B	CMR’S PRICE PROPOSAL SUBMITTED IN RESPONSE TO THE REQUEST FOR PROPOSALS
EXHIBIT C	SPECIAL SECURITY MEASURES – TERMINAL CONSTRUCTION
EXHIBIT D	CMR PAYMENT AND PERFORMANCE BOND FORMS AND OTHER CONTRACT FORMS
EXHIBIT E	NOT USED
EXHIBIT F	SCHEDULING SPECIFICATIONS

**AGREEMENT BETWEEN OWNER AND  
CONSTRUCTION MANAGEMENT AT RISK ENTITY (“CMR”)**

**THIS AGREEMENT** is effective this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between the Norfolk Airport Authority, a political subdivision of the Commonwealth of Virginia (“Owner”), with a business address of 2200 Norview Avenue, Norfolk, Virginia 23518, and \_\_\_\_\_ (“CMR”), with a business address of \_\_\_\_\_. Owner and CMR may be individually referred to herein as “Party” and collectively referred to herein as “Parties”.

**RECITALS**

**WHEREAS**, the Code of Virginia, in particular, the Virginia Public Procurement Act, § 2.2-4300, et seq. and Chapter 43.1 governing Construction Management and Design-Build Contracting (collectively, “VPPA”) authorizes the use of CMR contracts for construction projects; and

**WHEREAS**, the Owner desires to employ the CMR to provide construction management at risk services for the CONSOLIDATED RENTAL CAR FACILITY Project (“the Project”) at Norfolk International Airport (“Airport”), which is more specifically described in Exhibit “A,”; and

**WHEREAS**, the Owner has retained Gresham Smith as the Architect of Record and to provide design services for the Project (“Consultant”); and has retained entities to serve as the Owner’s Authorized Representatives (“OAR”).

**WHEREAS**, the CMR understands that coordination with all of these and other Owner’s Consultants retained for the Project is a required contractual obligation that is critical to the success of the Project; and

**WHEREAS**, the Owner has given public notice of the construction management at risk services to be rendered pursuant to this Agreement, a copy of which is attached hereto as Exhibit “A”; and

**WHEREAS**, the CMR represents that it is thoroughly familiar with and understands the requirements of the Project and is experienced in the administration and construction of projects of the type and scope contemplated by the Owner, is licensed, qualified, willing and able to perform the construction management at risk services required by this Agreement; and

**WHEREAS**, the CMR has submitted Qualifications and a Proposal for the Project in response to the RFQP issued by the Owner, and has been selected by the Owner as the top-ranked Offeror; and

**WHEREAS**, the selection of the CMR has been made in accordance with the provisions of the Virginia Public Procurement Act, § 2.2-4300, et seq. of the Code of Virginia and Chapter 43.1, Code of Virginia.



**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Owner and the CMR do hereby agree as follows:

**ARTICLE 1  
THE PROJECT TEAM AND EXTENT OF AGREEMENT**

- 1.1 Relationship of the Parties. The recitations set forth above are incorporated herein by reference. The CMR accepts the relationship of trust and confidence established between itself and the Owner by virtue of this Agreement. The CMR covenants with the Owner to furnish the skill and judgment reflected in its Statement of Qualifications and interviews and presentations, and to cooperate with all of the Owner's staff, consultants, representatives and contractors in furthering the interests of the Owner. The CMR agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in compliance with the Contract Documents and in the most expeditious and economical manner consistent with the best interests of the Owner and in full accordance with applicable federal, state and local laws and regulations.
- 1.2 The Project Team. The CMR shall work jointly and cooperate in good faith with the Project Team at all times through final close-out and shall be available thereafter should additional services be required. The CMR understands that the Consultant will provide leadership on all matters relating to design of the Project, with support from the CMR, and the CMR shall provide leadership to the Project Team on all matters relating to construction. The specific representatives of the CMR's team shall be set forth in each GMP.
- 1.3 Extent and Interpretation of Agreement.
  - 1.3.1 This Agreement between the Owner and the CMR supersedes any prior negotiations, representations or agreements. The parties agree that all commitments, agreements, or understandings concerning the subject matter of this Agreement are contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.
  - 1.3.2 Contract Documents shall be construed in a harmonious manner, whenever possible.
  - 1.3.3 This Agreement is the result of negotiation between the Owner and CMR, with opportunity for review by legal counsel. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. If any ambiguity or question of intent or interpretation arises, then this Agreement will be construed as if drafted jointly by the parties.
  - 1.3.4 The Contract Documents shall be considered together, so that any part of the Work shown or described on the Drawings, though not specifically referred to in the specifications or elsewhere in the documents, and any Work described or referenced in the Specifications or other document, but not shown or described on the Drawings, shall be performed by the CMR, as well as any work which, in the

opinion of Owner, may be fairly inferred from the Specifications, Drawings, other Contract Documents or by normal industry practice.

1.3.5 Detail Drawings shall take precedence over general Drawings for the same part of the Work. Specifications and detail Drawings that are prepared or approved by Owner after the execution of an Addendum shall be deemed part of such Specifications and Drawings if their requirements may be fairly inferred from the original Specifications and Drawings, and that portion of the Work shown thereby shall be performed without any change in the GMP or Project Substantial or Final Completion Dates.

1.3.6 As used in the Contract Documents, (i) the singular shall include the plural, and the masculine shall include the feminine and neuter, as the context requires; (ii) “includes” or “including” shall ‘mean “including, but not limited to”’; and (iii) all definitions of agreements shall include all amendments thereto in effect from time to time.

1.3.7 In the event of a conflict between any of the Contract Documents, the more stringent requirements shall apply if the conflict cannot be resolved by applying the following Order of Precedence:

1. Executed Agreement
2. Contract Modifications
3. Executed Addenda (including all exhibits, attachments, and other GMP documents)
4. Specifications and Drawings. Drawings take precedence over Specifications as to quantity and location. Specifications take precedence over Drawings as to quality of materials and workmanship.
5. The RFQP documentation, include all documentation and associated Construction Manager (Offeror) Response Documents
6. Owner, standard, or other reference Specifications or standards, or Drawings, details and sections.
7. Unit Price Schedules contained in a Bid or GMP
8. Measurements by Scale

#### 1.4 General Warranties and Representations.

1.4.1 By their execution hereof, the Owner and CMR each represent and warrant to the other that they are authorized to enter into this Agreement and that this Agreement represents such Party’s legal, valid and binding obligation, enforceable according to the terms thereof.

1.4.2 The CMR acknowledges that it has thoroughly reviewed this CMR Agreement, has had the opportunity to seek legal counsel to advise on the terms of this Agreement, and was able to review and comment on the Agreement as part of this competitive procurement process for selection. As such, in the event of any conflict in this Agreement, no rule of construction against the author shall be applied, as both parties will be deemed to be the authors of this Agreement and have both entered into this Agreement fully informed of its contents and as a result of their own volition.

1.4.3 The CMR acknowledges that it was competitively selected for this Agreement as a result of its Statement of Qualifications (SOQ), Proposal and presentation to the Owner during the selection process. The CMR agrees to provide its services under this Agreement at a level comparable to or greater than that referenced in its SOQ and presentation and agrees to use the team it proposed. CMR covenants, represents and warrants to Owner that:

1. It is a business organization duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, having full power and authority to engage in the business it presently conducts and contemplates conducting, and is and throughout the Work will be duly licensed or qualified and in good standing under the laws of said jurisdiction, including maintaining a valid general contractor's license;
2. It has the required authority, ability, skills and capacity to perform, and shall perform, the Work in a manner consistent with sound engineering and construction principles, project management and supervisory procedures, and reporting and accounting procedures;
3. The execution, delivery and performance of this Agreement will not conflict with any applicable laws or with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
4. It has knowledge of all the applicable laws and applicable building codes that are in effect on the Effective Date of the Agreement and of all business practices in the jurisdiction within which the Jobsite is located that must be followed in performing the Work.
5. Subject to any applicable exemptions of § 2.2-3109(B)-(C), Va. Code no officer or employee of Owner shall have a personal interest in a contract with CMR. "Personal interest in a contract" is defined as a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract. "Personal interest" is defined as a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of

the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv). "Personal interest in a contract" is a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract. "Immediate family" is defined as a i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

6. No member of or delegate to the Congress of the United States or the Commonwealth of Virginia General Assembly shall share in any part of this Agreement or any benefit arising therefrom.

1.5 Independent Contractor. CMR is an Independent Contractor and is not an agent or employee of Owner or agent in performing the Work. Except as otherwise provided herein, CMR shall maintain complete control and responsibility over its own employees, agents and operations and those of its subcontractors, vendors and their respective employees and agents. CMR hereby accepts complete responsibility as a principal for its agents, subcontractors, vendors, their respective employees, agents and persons acting for or on their behalf, and all others it hires to perform or assist in performing the Work.

1.6 Definitions: The following terms shall have the meanings specified herein. The definitions included in this Agreement are not exhaustive of all definitions used in this Agreement. Additional terms may be defined within this Agreement and the other Contract Documents.

1.6.1 "Addendum" means a written modification to the Agreement that becomes effective upon Owner approval, execution and delivery to the CMR. All approved GMPs shall be issued as an Addendum.

1.6.2 "Agreement" means this executed document, including all exhibits, Addenda, Contract Modifications and Contract Documents, such as the construction plans, specifications and other documents reflecting the terms and conditions for completion of the Work.

1.6.3 "AHJ" means any and all public entities and authorities having jurisdiction over the Project.

- 1.6.4 “Allowance” means the estimated dollar amount that is included in a GMP for the purpose of encumbering funds to cover the cost of items which may not be completely defined when the GMP is prepared or approved, but may be necessary to complete the Project.
- 1.6.5 Construction Manager or “CMR” means the entity with whom the Owner enters into this Agreement for the Work. The CMR is also at times called the Contractor in the Contract Documents, the Virginia Public Procurement Act, and other provisions of the Code of Virginia. Any reference to Contractor shall equally apply to CMR.
- 1.6.6 “CMR’s Contingency” means that portion of a GMP budget that is available to defray the increased Cost of a Project due to Unforeseen Circumstances as further defined in Paragraph 6.7.
- 1.6.7 “Commissioning” means the services to be provided by the CMR in accordance with Paragraph 2.8.
- 1.6.8 “Construction Documents,” means the Drawings and Specifications setting forth in detail the requirements of the construction of the Project that are signed and sealed by the Consultant.
- 1.6.9 “Consultant” means the firm identified on page 1 as the Architect of Record and all subconsultants and others for which the Consultant may be responsible. All questions regarding the specific role of each Consultant shall be directed to the OAR.
- 1.6.10 “Contract Documents” means this Agreement, including all exhibits, addenda and amendments, Contract Modifications issued after the execution of this Agreement, Drawings, Specifications and other referenced documents reflecting the terms and conditions for completion of the Work.
- 1.6.11 “Contract Modification” is a written change to this Agreement or the Work that is approved and executed in one of the following forms: (1) GMP Budget, Buyout & Contingency Management Form (2) Construction Change Directive (3) Field CM Change Order or (4) a GMP Amendment. See Paragraph 2.2.7 for additional definitions and requirements for each type of Contract Modification.
- 1.6.12 “Cumulative Contract Value” means the total sum of all GMPs (including GMP amendments, if any) that are approved under this Agreement.
- 1.6.13 “Day(s)” means calendar day(s) unless otherwise specified and when any contractual obligation is measured by the number of days and the deadline date falls on a legal holiday or weekend when the Owner’s office is closed, the obligation will be allowed to be completed on the next business day without penalty.
- 1.6.14 “Design Development Documents,” means the Drawings, Specifications, and other documents, which fix and describe the size and character of the Project as to

architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate for the CMR to review, evaluate and prepare cost estimates.

- 1.6.15 “Direct Cost of the Work” means the reimbursable costs for the elements of the Work that are expressly identified in Article 8.
- 1.6.16 “Drawings” means the official drawings or exact reproductions, approved by the Owner, which show the location, character, dimensions and details of the Jobsite and the Work to be done and which are to be considered as part of the Contract Documents. The Drawings shall include all drawings prepared exclusively for the Project as well as any referenced standard Owner or other referenced, plans, drawings, details and sections.
- 1.6.17 “Effective Date of this Agreement” means the date this Agreement is executed by the Owner.
- 1.6.18 “Estimate” means the CMR’s latest estimate of probable construction cost with respect to a specific scope of Work.
- 1.6.19 “Fee” means the amount to be paid to the CMR in accordance with Article 9.
- 1.6.20 “Final Completion Date” means the date on which Final Completion of the Project or an addendum for a Project Component is declared by Owner to have occurred.
- 1.6.21 “General Conditions Costs” means the reimbursable costs for items that are expressly identified in Article 7.
- 1.6.22 “General Services” are the services to be performed by the CMR that are described in Paragraph 2.2.
- 1.6.23 “GMP” or “Guaranteed Maximum Price” means the sum that is set forth in an Addendum as the agreed maximum price that the Owner will be obligated to pay for the Project or the Project Component covered by the Addendum.
- 1.6.24 “Hazardous Materials” means any hazardous materials or hazardous substances as defined in the Comprehensive Environmental, Response, Compensation and Liability Act (“CERCLA”) or the Resource Conservation and Recovery Act (RCRA) as the same may be amended from time to time, or any “hazardous material” or “hazardous substance” as defined in any applicable federal or state statute or regulation or local law.
- 1.6.25 “Jobsite” means those areas of the site or sites upon which the Project will be constructed and such additional areas as may, from time to time, be designated by the Owner for the CMR’s use.
- 1.6.26 “Notice to Proceed” means a Notice issued by Owner to CMR, or by CMR to a subcontractor, directing it to commence or proceed with the Work for the Project,

or a portion thereof, and stating any further limitations on the extent to which such Work may commence and proceed.

- 1.6.27 “Notice to Proceed Date” means the date on which the Notice to Proceed is issued to CMR, or the date stated in the Notice to Proceed as being the Notice to Proceed Date, whichever is latest.
- 1.6.28 “Owner’s Authorized Representative” or “OAR” means the entity or entities that have been retained by the Owner to facilitate the administration and management of this Agreement.
- 1.6.29 “Pre-Commissioning” means non-operating activities performed on equipment systems after installation including, but not limited to, removal of rust preventives, changing of lubricants, chemicals and supplies, checking motor rotation and machine alignment, checking of proper valve actuation, removal of temporary bracing, pressure and leak testing, safety valve testing and adjustment, checking electrical connections, performing continuity tests, delivery of operating and maintenance manuals to Owner and/or the OAR and training of Owner’s personnel and/or the OAR regarding operation and maintenance of such equipment systems and any other activities which are evidently necessary by virtue of the nature of the Work in order that all systems are functioning properly and safely during the Commissioning phase of the Project.
- 1.6.30 “Preconstruction Services” are the services to be performed by the CMR that are described in the Request for Qualifications and Paragraphs 2.2 through 2.6.
- 1.6.31 “Project” means the Consolidated Rental Car Facilities project and includes all ancillary and related Work in connection therewith. The Project may be contracted in phases with an Addendum for each Project Component.
- 1.6.32 “Project Team” means the CMR, the Owner, the Owner’s Authorized Representative(s) assigned to the Project, the Consultants and other CMR contractors.
- 1.6.33 “Project Component” means a portion of the Work of the Project that is included in an approved and executed Addendum or that is included in a GMP proposal.
- 1.6.34 “Project Manager” means the Project Manager for the CMR.
- 1.6.35 “Punch list” means the list prepared by CMR identifying matters that remain to be completed or corrected between Substantial Completion and Final Completion in order that Final Completion can be declared by Owner to have occurred.
- 1.6.36 “Schematic Design Documents” means Drawings and other documents illustrating the scale and relationship of the components of the Project and as further defined in the Consultant’s scope of work.

- 1.6.37 “Shop Drawings” means drawings, prints, diagrams, illustrations, brochures, schedules and other data that are prepared by CMR or any of its subcontractors or vendors, and which illustrate how specific portions of the Work will be fabricated or installed.
- 1.6.38 “Specifications” means the written directions and requirements for completing the Work. Standards for specifying materials or testing which are cited in the specifications by reference shall have the same force and effect as if included in the Contract physically. The Specifications shall include all Specifications prepared exclusively for the Project as well as any referenced standard Owner, or other referenced, specifications or standards.
- 1.6.39 “Subcontractor” means any entity that provides any labor, equipment or material to the CMR for the Project, including providers or suppliers of general requirements and vendors. Providers of utilities such as water and electrical power are not subcontractors.
- 1.6.40 “Subcontractor Change Order or Subcontract Modification” means a written change to a subcontract between the CMR and a Subcontractor.
- 1.6.41 “Substantial Completion Date” means the date identified on the Certificate of Substantial Completion. Each Addendum will have its own Substantial Completion Date.
- 1.6.42 “Unforeseen Circumstances” means circumstances that were not reasonably foreseeable by the CMR on the effective date of the GMP, not reasonably avoidable at the time of discovery and not attributable to noncompliance with the Agreement by the CMR or its subcontractors or suppliers.
- 1.6.43 “Work” means all the services required by the CMR pursuant to this Agreement and all Addenda, including without limitation, all Preconstruction Services (including those set forth in Paragraph 2.6), any engineering and design of those components of the Work for which CMR assumes design-build responsibility under the Contract Documents, procurement, manufacture, construction and erection, installation, training (including calibration, if required), inspection, testing management, commissioning, close-out, and all other services, labor, equipment and materials necessary for CMR to achieve Final Completion of the Project. Work also includes, but is not limited to, all labor, materials, equipment, services, and any other items to be used by CMR or its subcontractors or vendors in the prosecution of this Agreement, wherever the same are being engineered, designed, procured, manufactured, delivered, constructed, installed, trained, erected, tested, started-up or operated during start-up and testing and whether the same are on or off the Jobsite.



**ARTICLE 2**  
**CMR'S SERVICES**

2.1 CMR Services. The CMR shall be responsible for all services that are necessary and appropriate to the successful completion of the Project in a timely and cost-effective manner, including, but not limited to, all services specified in this Agreement. The CMR shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents. The CMR shall provide all requested services according to the capabilities reflected in its SOQ and presentation made to the Owner. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as agreed in writing between Owner and CMR, the form and content of all systems, reports, forms and regular submittals by CMR to Owner shall be subject to Owner's prior approval, and CMR shall submit such documents to OAR and Owner for approval prior to implementation. Owner's approval thereof shall not limit Owner's right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by CMR to Owner. All CMR services, including General Services and Preconstruction Services, shall be performed by CMR staff or team members included in the CMR's SOQ and Preconstruction Services Fee Proposal, unless otherwise approved by the Owner in writing. Upon request by the Owner, the CMR shall submit resumes and job descriptions for each position.

2.2 General Services

2.2.1 Project Management Information System (PMIS).

2.2.1.1 Commencing immediately after the Effective Date of this Agreement, the CMR shall implement and utilize throughout the life of this Agreement a mutually agreeable Project Management Information System (PMIS) consistent with the requirements as described herein.

2.2.1.2 The reports, documents, and data to be provided under the PMIS shall represent at all times an accurate assessment of the current status of the Project and its components and of the Work remaining to be accomplished. The PMIS shall provide a sound basis for identifying variances and problems and shall serve as a resource for making management decisions. Utilizing computerized systems, reports shall be prepared and furnished to the OAR. Data within the PMIS shall be accessible electronically (via internet) by the members of the Project Team and sent as requested to the Project Team.

2.2.1.3 The CMR shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required to provide instruction to members of the Project Team to facilitate each participant's

use and understanding of the PMIS. The workshop shall emphasize function and organization of the PMIS during the design and construction of the Project; and shall establish, with the full concurrence of the Project Team, procedures for accomplishing the management control aspect of the Project.

2.2.1.4 Within twenty-one (21) days of the Effective Date of this Agreement the CMR shall submit to the Owner for acceptance, the **format** for the reports to be generated by the PMIS for the following major elements:

- Narrative Reports,
- Schedules,
- Cost Control Reports and Estimates, including Estimated Cost at Completion, in a format acceptable to the Owner
- Project Accounting,
- Project Management Plans, and
- Contract and Field Administration, Document Management and Standard Forms.

All elements shall be maintained electronically in a format usable by the Owner and accessible (via website) by all members of the Project Team.

## 2.2.2 Narrative Reports

2.2.2.1 The CMR shall prepare monthly written reports as described hereunder. All written reports shall be in 8½” X 11” format submitted in an electronic pdf format, presented in an organized manner, and include applicable and necessary supporting information in appendices to the reports.

2.2.2.2 The Narrative Reporting Subsystem shall include the following reports:

1. A Monthly Executive Summary which provides an overview of each Project’s progress, current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project. . Include specific attention to Contract Modification status (i.e., amount, reason for change, responsibility) and a list of all potential change orders shall be addressed in detail. Include an estimate of costs at completion for the Project, identify any budget over-runs and make recommendations for mitigation of budget issues.
3. A Monthly Scheduling Narrative summarizing the current status of the Project and the Project’s schedule. This report shall include an analysis of the Project schedule, a description of the critical path,

and other analyses as necessary to compare planned performance with actual performance.

4. A Monthly Accounting Narrative describing the current cost and payment status of the entire Program and each Project. This report shall relate current encumbrances and expenditures to the budget allocations. The report shall be divided to separate building costs from tenant costs or divided between elements of the Work, as directed by the Owner.
5. A Monthly report summarizing the participation of certified Disadvantaged Business Enterprise (“DBE”) or SWAM firms, as applicable for the Project in the form prescribed by the Owner.
6. A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, permits, construction problems and recommendations, and plans for the succeeding month.
7. A Daily Construction Diary during the construction phase describing events and conditions on the site. The diary shall be maintained at the site and be available to members of the Project Team. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.

2.2.2.3 The written reports outlined in Paragraphs 2.2.2.2(1) through (5) above shall be submitted monthly during the pre-construction phase and all reports outlined in Paragraphs 2.2.2.2 shall be submitted monthly during the construction phase. All reports shall be transmitted to the OAR in both print and electronic form, unless otherwise agreed by the parties.

2.2.3 Schedule Control. The CMR shall be responsible for scheduling all elements of the Project.

2.2.3.1 Initial Preliminary Schedule. The CMR shall submit to the Project Team, with its Schematic Design Estimate, a preliminary, summary level schedule that reflects the Preconstruction Services and construction phases for all of the Work. This schedule shall identify, in the form of milestone dates, all inter-project relationships, including but not limited to, work activities and dependencies that are required in order to complete the Work. This schedule shall also incorporate the Consultant’s scheduled activities, any required Owner activities and other governmental activities, such as permitting and inspections. The Initial Preliminary Schedule shall also include long lead procurement items that require procurement by a specific time to prevent delay in the construction phase. The Initial Preliminary Schedule shall be in

a format that is acceptable to the Owner and shall include all design and construction milestone dates required by the Owner.

- 2.2.3.2 Owner Review and Schedule-Alignment Meeting(s). The Project Team will review the CMR's Initial Preliminary Schedule and provide comments and feedback to the CMR. The CMR shall attend any Schedule-Alignment Meeting, as required by the Owner, to review and align the Initial Preliminary Schedule. The CMR shall coordinate its schedule with the Owner, Consultant(s), and other contractors and Consultants as applicable, to ensure that the Project scheduling needs are met.
- 2.2.3.3 Reconciled Preliminary Schedule. Based upon the Owner review and the Schedule-Alignment Meeting(s), the CMR shall update and add detail to its Initial Preliminary Schedule as required. Once the preliminary schedule is aligned to meet the Project scheduling needs, the updated schedule shall become the Reconciled Preliminary Schedule. The CMR shall update the Reconciled Preliminary Schedule as required by the ongoing design progress. At a minimum, the CMR shall update the Reconciled Preliminary Schedule at the Design Development and Construction Document deliverables. The Owner review and Schedule-Alignment Meetings will repeat for each deliverable phase.
- 2.2.3.4 Failure to submit an acceptable preliminary schedule or any required update shall be cause for the Owner to withhold payment for Preconstruction Services.
- 2.2.3.5 GMP-Specific Schedule. Each proposed GMP shall include, as the GMP-Specific Schedule, the most current updated Reconciled Preliminary Schedule that complies with the scheduling Specifications attached hereto. The schedule that is included in each GMP shall establish achievement milestones for which compliance by the CMR is a material obligation of this Agreement.
- 2.2.3.6 Baseline Schedule. Within thirty (30) days of a Notice to Proceed for the first GMP, the CMR shall coordinate with the Owner, other contractors and applicable Consultant(s), prepare and submit to the Project Team a proposed detailed Baseline schedule that complies with the scheduling Specifications attached hereto and that reflects all required design, construction and occupancy activities, including all milestone dates that are consistent with the GMP-Specific Schedule(s). Failure to submit an acceptable Baseline Schedule shall be cause for the Owner to withhold payment for construction phase services.
- 2.2.3.7 Owner Baseline Schedule Review. The Project Team will review the proposed Baseline Schedule and provide comments, recommendations, and feedback as required. Upon receipt of review comments, recommendations, or feedback, the CMR will promptly update and resubmit its proposed

Baseline Schedule, no later than 48 hours. Once accepted by the Owner in writing, the Baseline Schedule shall be deemed part of the Contract Documents and shall serve to determine the impact of all delays, if any, and the impacts of all proposed or actual changes to the Work. See Article 10 and scheduling Specifications for additional requirements.

2.2.3.8 The Owner's acceptance or failure to object to any schedule shall not be deemed approval of any particular means or methodology. By allowing Work to continue after the scheduled completion date, the Owner does not waive any claim associated with the failure to meet the schedule.

2.2.3.9 Progress of the Work. The CMR shall monitor and remain solely responsible for the progress of the Work and achieving the scheduled completion and other milestone dates. The CMR shall promptly notify the OAR of any event that has or might cause a delay in the progress of the Work and the CMR shall make recommendations to avoid or mitigate impacts to the schedule. The CMR shall send this notice promptly (no later than 48 hours of the event or knowledge of a possible event), regardless of whether the CMR intends to submit a request for time extension in accordance with Article 10 and the scheduling Specifications.

2.2.3.10 Progress Schedules. The CMR shall submit monthly progress schedules that comply with scheduling Specification requirements.

2.2.3.11 The CMR shall also provide a short-term, look-ahead schedule and a summary schedule for the CMR's Work, weekly or as otherwise directed by the OAR.

#### 2.2.4 Cost Control and Estimating.

Within twenty-one (21) days of the Effective Date of this Agreement, the CMR shall submit to the Owner for approval its proposed format to be used for all cost estimates and the proposed format and content of the monthly Cost Control reports required by Article 2.2.5. The CMR shall provide sufficient timely written detail in monthly Cost Control reports for the Project to permit the Project Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost that will not exceed the maximum total Project budget.

#### 2.2.5 Project Accounting.

The CMR shall utilize an accounting system that will enable the Project Team to plan effectively and to monitor for the Project the cash flow, costs, Contract Modifications, payments, and other major financial factors by comparison of budget, estimate, amounts invoiced, and amounts payable. The accounting system utilized by CMR will serve as a basic accounting

tool and an audit trail, but it will not replace the Owner's accounting system and procedures. The Owner will maintain its own accounting system and procedures to be used as the source of all financial information for the Project. The CMR will retain all files in a manner consistent with proper accounting procedures that are sufficient for an audit by the Owner periodically during the Project if the Owner elects. The CMR's accounting system shall include the following reports:

1. Cost Status Report presenting the estimate, and baseline costs (awarded subcontracts and purchase orders) for any given subcontract or line item. It shall show approved and pending Contract Modifications for each subcontract. Pending contract modifications shall be specifically identified and incorporated into the Cost Status Report to illustrate the total estimated probable cost to complete the Project.
2. Payment Status Report showing the value in place (both current and cumulative), the amount invoiced to CMR (both current and cumulative), the amount paid by the CMR to date, the retainage, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each payment application.
3. Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the estimate and base-line costs figures for each subcontract. It shall give the Contract Modification history including Contract Modification numbers, description, proposed and approved dates, the proposed and approved dollar amounts and detailed reasons for the Contract Modification, and parties responsible. It shall also show all pending or rejected contract modifications. The payment history shall include the date, value-in-place, retainage, and accounts payable.
4. Cash Flow Diagram showing the projected accumulation of cash payments by the CMR against the Project Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments. This report shall include projections of contracted amounts and projections of potential and pending changes.
5. Job Cost Report. With each payment application, the CMR shall provide a Job Cost Report in a format that is acceptable to the Owner.
6. Subcontractor Change Order Report detailing the cost adjustments made to the subcontracts and supporting the actual cost of the work to be submitted with the applications for payment.

7. Report on Construction Contingency, showing the initial amount in both the CMR's Contingency and the Owner's Contingency, along with an itemization of expenditures charged to the respective contingencies. This Report shall include the date of approval by the Owner for each item and be submitted with each payment application.

## 2.2.6 Project Management Plans.

2.2.6.1 Within twenty-one (21) calendar days after the Effective Date of this Agreement, the CMR shall develop, in conjunction with the Project Team, and submit to the Project Team a draft Project Manual that includes preliminary information for all sections. The Manual shall be updated monthly to include comprehensive management plans as described in the following subsection, with detail developed and included as needed.

2.2.6.2 Contents of Project Manual. The Project Manual shall describe in detail the procedures for executing the work and the organizations participating in the Project. The Project Manual shall serve as a Project management plan, and shall include as a minimum the following sections:

1. Project Definition. The known characteristics of the Project shall be described in general terms that will provide the participants a basic understanding of the Project.
2. Project Goals. A description of the goals and objectives for the Project including a general discussion of schedule, budget, physical, technical and other objectives.
3. Project Strategy. A narrative description of the project delivery methods to be utilized to accomplish the Project and Project goals.
4. Project Work Plan. A matrix display of the work to be performed by each member of the Project Team during each phase of the Project.
5. Project Organization. A summary organization chart showing the interrelationships between the members of the Project Team, other supporting organizations, and permitting review agencies. Detailed charts showing organizational elements participating in this Project shall be included for each member of the Project Team.
6. Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the Project Team. The responsibility performance chart shall indicate primary and secondary responsibility for each specific task required to deliver this Project. The CMR shall develop a similar chart for the personnel within its own organization who are assigned to the Project, and for the personnel of the members of the Project Team from data supplied by each.

7. Flow Diagrams. Charts displaying the flow of information and the decision process for the review and approval of Shop Drawings and submittals, progress payments and Contract Modifications.
8. Communication Procedures. The CMR shall establish written procedures for communications and coordination required between Project Team members. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
9. Safety Plan. The CMR shall develop a comprehensive safety program for the Project to meet all applicable federal, state and local safety requirements including Occupational Safety and Health Administration (OSHA) provisions to be included in the Contract Documents. This will include an aggressive program for ensuring safety of all persons and property affected by the Work. The Safety Plan shall include emergency evacuation plans, and a description of how fire and EMT crews will access the Jobsite.
10. Quality Control Plan. The CMR shall develop and maintain an effective quality control plan and procedures to assure that materials furnished and quality of Work performed are in accordance with the Contract Documents.
11. Crisis Management Plan. The CMR shall develop a crisis management plan describing a general approach to and contacts in case of crisis situations, e.g., hurricane, riot, etc. that permits, to the fullest extent possible, uninterrupted Work or prompt resumption of the Work.
12. Labor Relations Plan. The CMR shall develop an approach to labor relations for the Project that assures, to the fullest extent possible, the uninterrupted completion of the Project in accordance with the schedule and budget.
13. Security Plan. The CMR shall develop and maintain a comprehensive plan to provide and assume all risks for Project safety and security and to protect the Project Jobsite and materials stored off-site against theft, vandalism, fire, and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
14. Small, Women-Owned, and Minority-owned Business (SWAM) The CMR shall develop an implementation plan for the stated



SWAM goal that expands on the proposed approach provided in the CMR's SOQ. The CMR shall provide to the Owner reports and other pertinent information as required to show the status of SWAM achievements throughout the project.

15. Commissioning Plan. The CMR, in coordination with the Project Team, shall develop a commissioning plan that will be implemented during the construction phase, which will provide a smooth and successful Owner or tenant occupancy of the Project. The purpose of the commissioning plan is to ensure that building systems perform interactively according to the design intent and the Owner's and its tenant's operational needs. Specific objectives include:
  1. Applicable equipment/systems are installed properly and receive adequate operational checkout by installing subcontractors;
  2. Verification and documentation of proper performance for installed equipment and systems;
  3. Verification that the design intent is being met continually;
  4. Documentation that operations and maintenance plans left on site are complete;
  5. Documentation that the Owner's operating personnel are adequately trained;
  6. Documentation that record plans are accurately prepared during the construction of the Project;
  7. Interaction with permitting authorities to facilitate the issuance of a Certificate of Occupancy; and
  8. Review of Contract Documents for warranty effective dates to coincide with the date for substantial completion for the Project.
  
16. Market Analysis and Bidders Plan. Within 30 days after the 30% design submittal has been issued, the CMR shall submit a written "Construction Market Analysis and Prospective Bidders Report," reporting on: availability of labor, material, equipment, and prospective bidders; possible impacts of any shortages or surpluses of labor or material, including risk of material and labor cost escalations, setting out recommendations to address, mitigate and lessen risk; and providing information as to prospective bidders for the Project. The CMR shall specifically develop a plan for stimulating interest of qualified contractors in bidding on the Work and familiarizing those potential bidders with the requirements of the Project, such as any general pre-qualification process that will be utilized.
  
17. Maintenance of Traffic, Site Utilization and Jobsite Logistics. The CMR shall submit to the Owner for approval a Maintenance of

Traffic, Site Utilization and Jobsite Logistics Plan, that includes at a minimum, all site logistics, access locations, a secure site perimeter barricade, service roads, fences, gates, barricades, office and storage trailer locations, staging and maintenance of traffic for the Project. The plan shall contain specific procedures for minimizing the disruption of surrounding operations and inconvenience to the public accessing the Project site(s). The plan shall include plans and other documents illustrating the scale and relationship of the Project components based on the Project's current and future requirements, construction schedule and construction budget requirements. The CMR shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced. The CMR shall update the plan as necessary or as requested by the Owner and include the most current approved plan in each subcontract bid package.

18. Disaster Preparation and Recovery Plan. The CMR shall develop and maintain a comprehensive disaster preparation and recovery plan in the event of an emergency, including a description of how the CMR will protect personnel and property in the event of a named windstorm, hurricane or other natural disaster.

2.2.7 Contract and Field Administration, Document Management and Standard Forms. The CMR shall maintain a document control system, including a correspondence log, in sufficient detail, to promote expeditious handling of all correspondence, submittals and Standard Forms. The CMR shall utilize the Owner's following Standard Forms where appropriate:

1. REQUEST FOR INFORMATION (RFI): A RFI shall be utilized in the field to present any questions or interpretations requested by the CMR. The OAR shall, upon receipt, secure a response from an appropriate source. The OAR will provide the CMR with a written response to the RFI with reasonable promptness to avoid or minimize delay in the progress of the Work.
2. REQUEST FOR CONTINGENCY OR TIME (CR): A CR shall be utilized by the CMR to request any monetary, time, or adjustment to this Agreement or any Addendum (GMP), including requests to use contingency. See Article 10.
3. CONSULTANT'S SUPPLEMENTAL INSTRUCTION (DSI): A DSI shall be utilized by the Consultant to provide clarifications or supplemental information to the CMR. The intent of the DSI is for the Consultant to clarify and supplement the existing requirements of the Contract Documents. A DSI may not modify the scope of Work.

4. BULLETIN: A Bulletin shall be utilized by the OAR and the Consultant to indicate proposed modifications to the drawings or specifications.
5. GMP AMENDMENT: A GMP Amendment is a modification to a GMP, approved by the Owner in writing that requires an extension to the Substantial Completion Date or a change to the total Guaranteed Maximum Price.
6. CONSTRUCTION CHANGE DIRECTIVE (CCD): A CCD shall be utilized when there is no agreement on a Contract Modification.
7. FIELD CM CHANGE ORDER (FCO): A FCO may be utilized for immediate direction and authorization to proceed with changes in the Work in accordance with the Owner's policies. A FCO cannot change the Substantial Completion Date or a GMP. FCOs shall be incorporated into a GMP by following the CR process or issuance of a CCD. The CMR shall cooperate with the Owner to ensure that FCOs are incorporated into a GMP within thirty (30) days from the completion of the FCO Work.
8. JOB MEMORANDUM (JM): A JM shall be utilized by the OAR to communicate in writing to the CMR either a deficiency in the Work or other action required of the CMR. The CMR shall provide a written response to the OAR with reasonable promptness.

### 2.3 CMR'S Staff and Supervision of the Work

- 2.3.1 For all services the CMR is to perform hereunder, the CMR shall maintain competent staff in all positions. The CMR shall submit a construction phase staffing plan for a GMP. The staffing plan shall detail the CMR's organization for all applicable work levels, including the superintendent level and on-site and off-site personnel. The personnel presented in the CMR's SOQ and presentation made to the Owner during the selection process shall staff key positions. For all other positions listed in the staffing plan, if applicable, the CMR shall provide resumes and job descriptions to the Owner of the persons being proposed to staff those positions. The CMR's Superintendent shall be on the site at all times during the performance of the Work. The Project Manager shall represent the CMR, and communications given to the Project Manager shall be binding on the CMR.
- 2.3.2 The Owner reserves the right to disapprove any person proposed for staffing at any phase, and the CMR shall offer substitutes therefore. It is expressly understood that failure of the Owner to disapprove a person does not confer the Owner's approval of such person. At any time, the Owner has the reasonable right to request removal and replacement of any of CMR's personnel and the CMR shall comply with such request within 15 days. Once in place, the CMR shall not remove or replace any person filling a position listed in the organizational charts without the prior written consent of the Owner, which shall not be unreasonably withheld or delayed, unless the Owner requests such removal or replacement or unless the person is leaving the

employment of the CMR. If any person filling a position listed in the CMR's organizational chart is removed or replaced, the person proposed as a replacement must have comparable qualifications, experience, and billing rate. The Owner reserves the right to disapprove any proposed replacement and the CMR shall then offer further substitutes.

- 2.3.3 The CMR shall supervise, direct and inspect the Work, using the CMR's best skill and attention. The CMR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, including coordination of the duties of all subcontractors and suppliers, unless the Contract Documents give other specific instructions concerning these matters. The CMR shall control its operations and those of its subcontractors and suppliers to assure the least inconvenience to the traveling public, impact on airport operations or interference with other ongoing construction projects. Under all circumstances, safety and security shall be a paramount consideration.
- 2.3.4 The CMR shall be responsible to the Owner for acts and omissions of the CMR's employees, subcontractors, suppliers, and their agents and employees, and all other persons performing portions of the Work for which the CMR is responsible. The CMR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the OARs or by tests, inspections, or approvals required or performed by persons other than the CMR. The CMR shall be responsible for inspection or examination of portions of Work already performed under this Agreement to determine that such portions are in proper condition to receive subsequent Work. The CMR shall keep detailed written records of all inspection or examination efforts. These written records shall include dates, subject matter, persons present, results of inspections or examinations, documented by photographs or videos if appropriate, and shall be made available to the Owner immediately upon request.
- 2.3.5 The CMR is fully responsible to provide a sufficient number of skilled workers, supervision, and project management personnel to prosecute the Work and ensure that the Work is completed within the Project completion time. This requirement shall be effective no later than the commencement of the Work. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL WORK UNDER THIS AGREEMENT AND IN THE COMPLETION OF THE PROJECT.** Failure to fully staff the Project with skilled workers, supervision, or project management personnel may be cause for termination of any or all Addenda or this Agreement, and in Owner's sole discretion, the initiation of such other remedies as set forth in the Contract Documents.
- 2.3.6 As required by § 2.2-4308.2, Va. Code, the CMR shall utilize the U.S. Department of Homeland Security's Employment Eligibility Verification System (E-Verify), in accordance with the terms governing the use of the system, to confirm the employment eligibility of persons employed by the CMR, during the term of this Agreement, to perform employment duties within the Commonwealth of Virginia.

The CMR shall include an express provision in the Subcontracts requiring the Subcontractors to do the same.

2.4 Jobsite Facilities. The CMR shall arrange for all Jobsite facilities as are necessary to enable the members of the Project Team to effectively perform their respective duties in the management, inspection, and supervision of construction. Within 14 calendar days of the Effective Date of this Agreement, or as otherwise agreed by the Owner, the CMR shall develop a proposal for Project Team approval, describing the facilities to be provided, the methods of acquisition of the facilities and disposition of the acquired facilities and equipment upon completion of the Program. The CMR shall retain ownership of all materials removed from the Jobsite unless specifically identified in other Contract Documents.

2.5 Administrative Records. The CMR will maintain and secure at the Jobsite, unless agreed to otherwise by the Owner, on a current basis, files and records such as, but not limited to, the following:

- All Permits
- A roster of companies working on the Project with names and telephone numbers of key personnel
- Punch Lists
- Cost Proposal Requests
- Bid Analysis/Negotiations/Award Information
- Contracts/Purchase Orders, including all changes
- Material/Equipment Invoices
- Delivery Logs
- Payment Applications and Payment Records
- Payroll Records
- Supporting Documentation for all Costs
- Transmittal Records
- Inspection Reports and Test Results
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- DBE or SWM Reports with payment records as applicable
- Shop Drawings Submittals and Submittal/Approval Logs
- Project Plans and Specifications and Addenda
- Warranties and Guarantees
- Cost Accounting Records (Labor Costs, Material Costs, Equipment Costs)
- Subcontractor Pay Exception Report
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Purchase Orders
- Documentation of all Direct Costs of the Work and General Conditions costs

- Insurance Certificates and Bonds
- Technical Standards
- Design Handbooks
- “As-Built” Marked Prints
- Operating and Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Contract Modifications
- Subcontracts, including Subcontract Change Orders and Releases
- Project Manuals, including all Contract Documents
- Weekly certified payroll records of the CMR and subcontractors of all tiers
- Any other records and files identified by the Owner

All administrative records shall be available to the members of the Project Team at all times.

## 2.6 Preconstruction Services

2.6.1 The CMR shall proactively consult and coordinate with the Owner, Consultant, OAR, permitting authorities, other Consultants, contractors and any other party relevant to the Consolidated Rental Car Facilities Project. The CMR shall schedule and conduct meetings with the Consultant, Owner, OAR, other Consultants and other contractors hired by the Owner, and consultants hired by Owner, to discuss such matters as procedures, progress, coordination, and scheduling of the work. The CMR shall advise the Owner and Architect on proposed site improvements, selection of materials, building systems, equipment, permitting, and bid packaging strategies. The CMR shall provide recommendations consistent with the Project requirements to the Owner and Architect on constructability, document coordination and clash detection; availability of material and labor; time requirements for procurement and procurement and bid package plans for long-lead items, installation and construction; and factors related to construction costs including but not limited to alternative designs or materials, preliminary budgets, life cycle data, cost escalation risk and mitigation strategies, and possible cost reductions.

2.6.2 In addition to any other services to be performed during the Preconstruction Services as may be specified elsewhere in this Agreement, the CMR shall provide all management, supervision, labor, services, equipment, tools, supplies and any other item of every kind and description required to provide comprehensive preconstruction services, including, without limitation, attending design meetings, suggesting and evaluating value engineering options, preparing detailed CPM schedules and detailed estimates, conducting design and constructability reviews, conducting pre-bid meetings, bid interviews, managing all bidding and negotiations with all subcontractors and suppliers and all other services required by the Owner for establishing a Guaranteed Maximum Price for the Project and conducting all

necessary coordination with contractors and consultants involved in adjacent projects in order to avoid construction phase impacts or interference. Within fourteen (14) days of the Effective Date of this Agreement or as otherwise agreed between the parties, the CMR shall submit a comprehensive staffing plan for Preconstruction Services for approval by the Owner.

#### Preliminary Evaluations.

2.6.2.1 Kick-Off Meeting. The CMR shall coordinate and participate in a kick-off meeting with the Project Team to establish rapport and develop a common appreciation of the goals of the Project.

2.6.2.2 Project Evaluation. Within thirty (30) days after the Notice to Proceed for Preconstruction Services, the CMR shall provide a preliminary written evaluation of the Owner's Project and budget requirements, including the CMR's cost model and a review of all background data made available by the Owner as to the requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project.

2.6.2.3 Site Conditions. The CMR shall become thoroughly familiar with the Jobsite and conditions surrounding the Jobsite and document the conditions observed on the site with photos or videos. The CMR shall review with the OAR and Consultant, the site data, such as access, location of services, public safety, security, surveys, soils information, adjacent projects and other relevant information related to the Project and carrying out the Work. The CMR shall be responsible for the development and implementation of a plan to ensure proper identification and location of all existing utilities, services, other underground facilities and surface and subsurface conditions that may impact the Project. The Owner makes no representations regarding site conditions.

#### 2.6.3 Design Review and Recommendations

2.6.3.1 The CMR shall participate in design review meetings with the Project Team. For each design submittal, the CMR shall review the design documents for clarity, consistency, constructability, construction feasibility and practicality, trade packaging, phasing and identification of errors, omissions, conflicts and apparent defects and coordination of documentation. The CMR shall identify all Specifications that may limit bidder participation, including any sole source and proprietary Specifications, and make recommendations for increasing market participation and competition.

2.6.3.2 The CMR shall follow the development of design through final Construction Documents, reviewing the in-progress Schematic Design Documents and Design Development Documents, and familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing,

electrical, and structural Drawings and Specifications, and all other Drawings and data prepared by the Consultant related to the Project. The CMR shall analyze the design for constructability, including construction feasibility and practicality, and alternative materials/methods.

- 2.6.3.3 Throughout the duration of the Agreement, not only during the Preconstruction Services, the CMR shall assist and advise the Project Team in exploring potential value engineering, alternative approaches, materials and systems to minimize total construction and operation costs, or to enhance the quality of the Project or any components thereof.
- 2.6.3.4 The CMR shall continuously monitor the impact of proposed design on the Project schedule and recommend adjustments in the design documents or construction bid packaging to ensure completion of the Project in the most expeditious manner possible, including recommendations for packaging of bid documents and phasing of the Work to meet overall schedule requirements and to maximize the opportunities for small business participation.
- 2.6.3.5 Building Information Modeling (BIM). The Consultant will develop and manage design of the Building Information Model (BIM) and provide protocols for BIM (the “BIM Protocol”). The CMR and Consultant shall participate in one or more BIM workshops that will be scheduled and facilitated by the Owner in order to ensure compatibility with the BIM Protocol.

The BIM Protocol shall address all of the processes and procedures for BIM, and include the Model Element Matrix. Notwithstanding anything to the contrary in the BIM Protocol, the following provisions shall apply to this Agreement:

1. Unless otherwise directed by the Owner in writing, traditional 2D plans and specifications shall be developed using the BIM software set forth in the BIM Protocol, shall be printed from the approved Design Model and shall be signed and sealed for construction and permitting. The Drawings and Specifications that are used for permitting shall govern in the event of any conflict or discrepancy between them and any Model.
2. All Contributors must have experience with the BIM process and the applicable BIM software. Nothing in the BIM Protocol shall diminish the CMR’s standard of care for rendering the Services. The Consultant shall be and remain responsible for the accuracy of the Design Model and, based on the As-Built information provided by the CMR, the As-Built Project Model. The CMR shall be and remain responsible for the accuracy of any specific-use models required by the BIM Protocol, such as schedule, cost, and conflict detection



models, and for the accuracy of the As-Built information provided to the Consultant which shall include pdf files showing all redlines and changes.

3. Nothing in the BIM Protocol shall expand the extent to which, under applicable law, the Owner warrants the adequacy and/or sufficiency of the design.
4. Contributions by the CMR and its subcontractors, subconsultants and suppliers to a Model shall not constitute the performance of design services.
5. The Consultant and CMR and their subconsultants and subcontractors shall use their best efforts to minimize the risks of claims and liability arising from the use of or access to any Model. Such efforts shall include promptly reporting to the relevant Project Participants and the Owner's BIM Manager (as identified in the BIM Protocol) any error, inconsistencies, or omissions it discovers in any Model; however, nothing in this Section shall relieve any party of liability it would otherwise bear under its contract. Regardless of the phase of the Project, each Contributor shall promptly report all known conflicts to the BIM Manager to log and track the resolution of each conflict. When notified of a conflict within its responsibility, the party shall act promptly to mitigate the conflict within the time specified by the BIM Manager, unless the Owner approves otherwise in writing.
6. The CMR shall be and remain responsible for its Contributions and access to the Model(s), including all Contributions and access to a Model by its subcontractors and subconsultants. Nothing in this Section shall diminish the dimensional accuracy stated in the BIM Protocol.
7. The Owner shall have all ownership of and rights to all CAD files, the BIM Model(s), and all data developed for the Project(s) and shall have unlimited use rights to all Project files, Models and data. All Contributors warrant that they hold the intellectual property rights over the Contributions they make and shall indemnify, defend and hold harmless all other parties who may use such Contribution in the event of a third-party intellectual property dispute.

2.6.4 Design Review Reports and Warranty. Within 21 calendar days of receipt of each design submittal, or within other such time set forth in the Baseline Schedule, the CMR shall submit a written report to the Project Team identifying any apparent ambiguities, defects or conflicts in the design, Drawings and Specifications or other documents, use of illegal or restrictive requirements, overlap between the trade contracts, omissions, lack of correlation between Drawings and any constructability

issues or other deficiencies so that the Consultant may arrange for necessary corrections. The report shall also provide advice regarding (i) site use and improvements; (ii) selection of materials, building systems and equipment; (iii) methods of Project delivery, permitting, phasing and subdivision of the Work; (iv) recommendations on relative feasibility and practicality of construction; (v) potential value engineering and alternative materials; (vi) availability of materials and labor and any specific risk of costs escalations; (vii) time requirements for procurement, installation and construction (viii) factors related to possible changes in the Work including, without limitation, the estimated costs of alternative designs and materials and possible economies and (ix) all comments related to the design review. The report shall also address the suggestions and/or recommendations previously submitted, additional suggestions or recommendations, as it may deem appropriate, and action apparently taken by the Consultant with respect to same.

At completion of the CMR's review of the Contract Documents that are used for bidding, except only as to specific matters as may be identified by appropriate comments relayed in accordance with this Agreement, the CMR warrants that the Drawings and Specifications are consistent, practical, feasible and constructible and that the Work described in the Contract Documents is constructible within the scheduled time and the Project estimate. The CMR's foregoing warranties exclude latent defects and deficiencies in the Drawings and Specifications not reasonably discoverable by CMR.

The Owner disclaims any warranty that the Drawings and Specifications for the Project are accurate, practical, consistent or constructible. Owner's review and/or approval of the Drawings and Specifications shall in no way diminish or release the warranty of adequacy and fitness for intended purposes. The Owner is expressly relying on the skill and expertise of the Consultant(s) and the CMR for these services.

## 2.6.5 Cost Estimates

2.6.5.1 Cost Estimate Format: The CMR shall use the cost estimate format approved by the Owner (refer to Paragraph 2.2.4). The cost estimate format shall provide the framework for all estimating required for this Agreement and shall serve as the basis for all estimates for the Project including the development of all proposed GMPs.

2.6.5.2 Initial Project Estimates. Within 45 days after the Notice to Proceed for Preconstruction Services, or as otherwise agreed in writing by the Owner, the CMR shall prepare and submit to the OAR an overall cost estimate for the Project.

2.6.5.3 Project Estimate Updates. The CMR shall prepare several levels of budgeting, estimating and pricing appropriate to each level of design for the Project, with increasing level of detail as the design progresses. The CMR shall assist the Project Team in achieving the Project budget requirements

and other design parameters. The CMR shall provide construction budget evaluations of alternative materials and systems. The CMR shall provide input to the Project Team on clarifications needed to reduce allowances for contingencies. Within 14 calendar days of receipt of each design submittal, or within other such time set forth in the latest accepted Project Schedule or upon request by the Owner, the CMR shall refine and update the Project estimate. With each updated estimate, the CMR shall submit a report of line item variances from the previous estimate with information describing the basis for each variance. The CMR shall also identify all assumptions upon which each estimate is based and shall review each phase of design to confirm that the estimate assumptions are incorporated into the design documents. The CMR shall work with the Owner's independent cost estimator, if any, to reconcile any inconsistencies in the estimates. If at any time, the CMR discovers that the Project is estimated to cost more than the budgeted amount, the CMR shall make specific recommendations for how to achieve the Project budget.

#### 2.6.5.4 Not Used

2.6.5.5 Bid Document Estimates. When the Drawings and Specifications for each subcontract trade package are developed to a point when the Project Team determines that the subcontract bids or proposals can be solicited, the CMR shall prepare and submit a cost estimate for each subcontract bid package on the basis of a quantitative material take-off with current local costs, prior to issuing the bid documents.

2.6.5.6 Construction Documents Estimate. Within 21 calendar days of receipt of the final Construction Documents that have been signed and sealed by the Consultant, or within the time set forth in the applicable Project Schedule or as otherwise requested by the Owner, the CMR shall reconcile the previous estimate and advise the Project Team immediately if it appears that the Project cannot be completed within the time allowed by the most current schedule and within the latest reconciled estimate.

2.6.5.7 Upon request, the CMR shall assist Owner and Consultant in preparing comparative life-cycle studies of ownership, operating, and maintenance costs for each schematic design alternative considering costs relating to efficiency, usable life, maintenance, energy and operation.

2.6.6 Long Lead Procurements. The CMR shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) for this Project. When each item is identified, the CMR shall notify the Project Team of the required procurement and schedule. Such information shall be included in the bid documents and be made a part of all affected subcontracts. As soon as the Consultant has completed Drawings and technical Specifications the CMR shall arrange for procurement of such long-lead items, as authorized by Owner. The CMR shall keep the Owner informed of the progress of the respective

subcontractors or suppliers, manufacturing or fabricating such items and advise the Project Team, of any problems or prospective delay in delivery.

- 2.6.7 Phasing and Subdivision of the Work. The CMR shall make written recommendations to the Project Team with respect to phasing and subdividing the Work in such manner as will permit the CMR to complete the Work within the Project budget and schedule and to maximize the potential for small business participation. The evaluation shall include recommendations for options to fast track the Project, or certain parts thereof, to achieve earlier completion of the Project. The CMR shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. The CMR shall take such measures as are appropriate to provide that all construction requirements for the Project will be covered and that the separate construction subcontracts will be without duplication or overlap, and will be sequenced to maintain completion of all Work on schedule. Each bid scope shall clearly identify the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors. The CMR shall obtain written approval from the Owner of the proposed phasing and subdivision of the Work for the Project before proceeding with any procurement or performance of the Work. In submitting the proposed phasing of the Work for the Project, the CMR recognizes and shall take into consideration that the Norfolk International Airport operates 24-hour a day, 365 days a year, which requires the Work to be performed in a manner to minimize impacts to daily operations and the Owner will have a moratorium for certain calendar days in which no Work may be performed by CMR. The CMR agrees to and shall take such measures as are appropriate to plan, phase, and stage the Work to minimize any impacts to the continued operations of the Norfolk International Airport and maintain a safe passenger experience in and around the facility during the performance of all construction activities and the Work.
- 2.6.8 Stimulation of Bidder Interest. The CMR shall monitor conditions in the construction market to identify factors that may affect costs and time for completing the Project. The CMR shall be responsible for stimulating bidder interest in the local, regional and national marketplace, and shall identify and encourage bidding competition.
- 2.6.9 Interfacing. The CMR shall address and comply with all laws and regulations applicable to the performance of its services and the Work, including local building codes and departments, local utilities, communications, and other infrastructure issues. The CMR shall represent the Owner with these entities only if requested by the Owner in writing. The CMR shall assist the Owner with interfacing, as necessary, with the Virginia Department of Transportation, Virginia Department of Environmental Quality, the United States Army Corp of Engineers, Norfolk County, City of Norfolk and any AHJ.

2.6.10 GMP Proposal. During the Preconstruction Services, the CMR shall prepare Guaranteed Maximum Price proposal(s) in accordance with Article 6.

2.7 Construction Phase. In addition to any other Work to be performed during the Construction Phase, as may be specified elsewhere in this Agreement, the CMR shall perform the following Construction Phase Services:

1. CMR's Staff. The CMR shall maintain sufficient off-site support staff and competent full time on-site staff who are authorized to act on behalf of the CMR to provide continuous on-site monitoring and coordination, inspection and general direction of the Work, and progress of the subcontractors. Owner's approval of the amount or duration of staff positions in a GMP does not relieve the CMR from providing all of the necessary qualified staff that is required to timely complete the Project and each GMP.
2. Lines of Authority. The CMR shall establish and maintain lines of authority for its personnel, and shall provide this definition to the Project Manager, the OAR and all other affected parties such as the inspectors, the subcontractors, and the Project Team, for general direction of the Work and the orderly progress of the various phases and subcontractors. Directions given to the CMR's Project Manager by Owner shall be binding on CMR. The OAR, Owner and Consultant(s) may attend meetings between the CMR and its subcontractors; however, such attendance shall not diminish either the authority or responsibility of the CMR to administer the subcontracts and carry out the Work. At all times during the course of the Work, CMR shall provide at the Jobsite a Project Manager who shall be satisfactory to Owner.
3. Procurement of Subcontracts. All subcontracts shall be competitively awarded in accordance with the process set forth in the following paragraph, unless the CMR has adequately documented justification of award and obtained Owner written approval for a non-competitive award (i.e., subcontracts that are supported by a state, federal or cooperative purchasing agreement, subcontracts available only from one source, subcontracts required in the event of an emergency, and small subcontracts below the applicable threshold for competition). The CMR shall follow the Owner's direction for the procurement of all subcontracts. The CMR shall provide documentation to the Owner detailing the reasons any Work was not procured by publicly advertised, competitive sealed bidding, to be maintained in the Project files.

For all subcontracts that are competitively awarded, the CMR shall:

1. Publicly advertise Requests for Qualifications and Invitations to Bid;
2. If prequalification is required, evaluate all statements of qualifications and provide a written response to each application for prequalification within ten (10) business days of receipt, either prequalifying the applicant, requesting additional information or rejecting the application; Rejections

must contain an explanation of the reason that the firm is not sufficiently qualified to perform the Work and are subject to approval by the Owner;

3. Upon request from the Owner submit the master list of prequalified subcontractors, in the format requested by the Owner, which may include an alphabetical list, a list by geographic region and/or by trade package;
4. If less than three bids are received, the Owner may require rebidding the package;
5. Prepare the invitations for bids or requests for qualifications and assemble all bid documents and Contract Documents for each subcontract; All solicitations shall clearly state the basis for award (whether lowest responsive bid or best value), clearly state the small and minority business participation goals and requirements, if any, and shall include a statement that no contractual relationship will be created between the subcontractor and the Owner;
6. Conduct a pre-bid conference with prospective bidders, with notice to the OAR. In the event that questions are raised which require an interpretation of the bid documents or otherwise indicate a need for a clarification or correction of the invitation for bids, the CMR shall request clarification from the OAR and Consultant when necessary;
7. Prepare all bid addenda for review by the OAR and Consultant and if no objection is received within a reasonable time, issue to all of the prospective bidders. Bid addenda shall be the only medium for making any clarifications or corrections to the bid documents;
8. Publicly open only those bids that were submitted by prequalified subcontractors, when prequalification is required, (and return unopened any bids that are received from subcontractors that have not been prequalified) and publicly announce the bidders names and bid amounts;
9. Analyze the bids and their relationship to the budgeted and/or estimated amounts; Prepare a bid tabulation and such other support data as necessary to document the comparison of the various bids, their responsiveness to the Bid Documents, including small and minority business participation, and the basis for the CMR's proposed selection, including an explanation if the CMR proposes an award to any entity that is not the apparent lowest bidder; Clearly identify on the bid tabulation any adjustments to the submitted bid and document the reasonableness of all proposed adjustments to the satisfaction of the Owner; Recommendations for award may be based upon best value; however, the Owner may, at any time, require a bid package to be re-bid or require all future bid packages to be awarded to the lowest responsive bidder without allowing for any post-bid adjustments;

Subcontracts for professional services, such as surveying, may be awarded based upon qualifications or best value;

10. Copy the OAR on all correspondence with bidders regarding the submitted bids and all post-bid interview correspondence and documents; Do not disqualify a bidder or reject a bid without OAR written approval;
11. Prepare a lease-purchase analysis for any personal property that is recommended for rental or leasing, documented to the satisfaction of the OAR and Owner;
12. Present the bid results and analysis, approved subcontractor labor and burden rates for standard work classifications, and any other documentation requested by the OAR and assist the OAR, upon request, with presentation of the recommended award to the Owner for approval;
13. Notify bidders of the date, time and place of the Owner's meeting to review the recommendation for approval;
14. Within fourteen (14) days of approval of a subcontract award, submit to the OAR a copy of executed subcontract, including all attachments, exhibits, agreed labor rates, subcontractor schedule of values and confirmation of enrollment in the Contractor's Controlled Insurance Program, if applicable. Payment will not be made for subcontractor work until a copy of the executed subcontract that is consistent with Owner approval is provided to the OAR.

Subcontract Work shall not commence until the subcontract award is approved by the Owner.

For CMR self-performance of the Work and bids from CMR team members, refer to Article 4.

4. Subcontractor Schedule and Project Manual Provisions. The CMR shall provide subcontractors with applicable portions of the Project Manual emphasizing their respective responsibilities for performance and the relationships of their Work with respect to other subcontractors and suppliers. The CMR shall also continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates, to enable them to perform their respective tasks so that the construction progresses in a smooth and efficient manner in conformance with the most current Project Schedule. The schedule shall include all phases of the construction Work, material supplies, long lease procurement, approval of shop drawings, contract modifications in progress, schedules for Contract Modifications, and performance testing requirements. The CMR shall review each subcontractor's construction schedule and conformance with applicable Contract Documents and ensure that established completion dates will comply with overall Project Schedule requirements. The CMR shall review the progress of construction of each subcontractor on a monthly basis, evaluate the

percentage completion and compare actual progress to schedule, and determine and implement alternative courses of action that may be necessary to achieve timely and complete Project completion by the subcontractor. The CMR shall determine the effect on schedules of requested time extensions and require recovery schedules from subcontractors as needed.

5. Quality Control. The CMR shall be responsible and accountable for the quality control of the Work including quality control testing and inspection. The CMR shall review and supervise the Work of all subcontractors, safety and security plans, reviewing construction means, methods, techniques, sequences and procedures, shop drawings, and providing instructions to each when their Work does not conform to the requirements of the Contract Documents for the Project. The CMR shall continue to exert its control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. The CMR shall receive copies of all claims or reports issued by the Consultants' Field Representative relative to the performance or acceptability of the Work. Should disagreement occur between the CMR and either the OAR or the Consultant over acceptability of the Work and its conformance with the requirements of the Contract Documents of the Project, the Owner shall *be* the final judge of performance and acceptability, and noncompliant work shall be corrected accordingly. The Owner may employ an independent firm for verification testing of the quality control testing. The CMR will exercise reasonable care and diligence in discovering and promptly reporting to Owner any defects or deficiencies in the Work. The CMR shall establish the Project Schedule and schedule milestones and review the progress schedules submitted by subcontractors in order to ensure proper completion of the Work.
6. Subcontractor Interfacing. The CMR shall be the single point of interface with all of its subcontractors and suppliers, and there is no requirement that Owner or any of its agents or representatives, including the Consultant, interface with such subcontractors and suppliers. The CMR shall negotiate all Subcontractor Change Orders with the affected subcontractors. The CMR shall review the costs of all proposed Subcontract Change Orders and advise the Owner of their validity, basis for entitlement and reasonableness, acting in the Owner's best interest prior to requesting approval of each Subcontract Change Order from the Owner. See Article 10 for additional requirements. Before any Work commences on any Subcontract Change Order, Owner's written approval of the Subcontract Change Order is required. However, when health and safety are threatened, the CMR shall act immediately to remove the threat to health and safety, seeking input from the OAR if reasonably possible.
7. Coordination with Adjacent Work. The CMR expressly acknowledges and understands that various construction projects will be proceeding simultaneously with this Project, including other construction management at risk projects that are nearby or adjacent to the Project. The CMR shall coordinate with the OAR to address any coordination or cooperation issues that may arise with the other contractors hired by the Owner or for any work adjacent to or interfacing with the



Project hereunder. The CMR shall fully cooperate with the Owner, OAR(s), and other CMR firms and contractors to coordinate all adjacent or related work and facilitate a smooth connection to the nearby projects.

8. Permits, Inspection Certificates and Dewatering. The CMR shall coordinate with the Consultant regarding the submittal of all required documents for permits. The CMR shall secure all necessary permits from applicable permitting authorities and all necessary utility connection permits. The Owner shall pay any connection charges for permanent utility connections directly to the utility supplier, and CMR shall coordinate such connections with the utility supplier. The Virginia Uniform Statewide Building Code applies to the Work and shall be administered by or at the direction of the Consultant. The Building Permit and Wetlands Permit (if required) will be obtained and paid for by the Owner. All other permits, local license fees, business fees, taxes, or similar assessments imposed by the appropriate political subdivision shall be obtained and paid for by the CMR. The CMR shall secure and pay for all required permits that are necessary for the proper execution and completion of the Work, including, but not limited to, all other applicable site permits, building permits, engineering, dewatering, National Pollution Discharge Elimination System (NPDES) stormwater management and all other permits required to complete the Work and pay for all fees and charges necessary for temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Jobsite) for storage of materials and other purposes unless otherwise stated in the Contract Documents. In addition, the CMR shall procure all required certificates of inspection, use, occupancy and completion. All required certificates of inspection, use, occupancy and completion shall be delivered to the Owner in sufficient time for occupancy of the Project in accordance with the schedule for the Work. The CMR shall provide and maintain all necessary dewatering facilities including facilities to handle stormwater run-off and shall adequately dewater the site at all times during the course of construction. The CMR shall treat all groundwater and storm runoff prior to being pumped from the site in compliance with all applicable laws, codes LEED requirements and environmental regulations. The CMR shall have on the Jobsite an employee certified by the Department of Conservation and Recreation as a Responsible Land Disturber who shall be responsible for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. The CMR shall prevent Jobsite soil erosion, the runoff of silt and/or debris carrying water from the Jobsite, and the blowing of debris off the Jobsite in accordance with the applicable requirements and standards of the Contract Documents, the Virginia Department of Conservation and Recreation's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.
9. Safety Program. The CMR shall designate a full-time, qualified and experienced staff member as the Project safety director who shall oversee job safety and accident prevention for the CMR. This individual shall review the proposed safety program of each subcontractor and make appropriate recommendations. The CMR shall conduct a review of job safety and accident prevention at its progress meetings with

subcontractors. The performance of such services by the CMR shall not relieve the subcontractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, codes, rules, regulations and orders applicable to the conduct of the Work.

10. Inspection Coordination. The CMR shall coordinate and schedule all technical inspection and testing provided by professionals designated by the OAR, the Owner, permitting authorities, and others. The CMR shall also schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to the Contract Documents and provide a copy of all inspection and testing reports to OAR on the day of inspection or test. The CMR shall provide reasonable prior notice to appropriate inspectors before the work is covered up, but in no event less than 24 hours before the work is covered up. All costs for uncovering work not inspected and any reconstruction due to lack of reasonable prior notice shall be borne by CMR. If members of the Project Team are to observe said inspections, tests or approvals required by the Contract Documents, they shall be notified in writing by the CMR of the dates and times of the inspections, tests or other approvals. The Owner may charge to the CMR and may deduct from any payments due the CMR, all costs incurred in connection with any overtime work or re-inspection costs, including engineering and inspection expenses, unless the overtime work was requested by the Owner and the Project is on schedule. The CMR shall schedule, direct and/or review the services of or the reports and/or findings of surveyors, environmental consultants and testing and inspection agents engaged by the Owner. All materials and equipment furnished by CMR and Work performed by CMR shall at all times be subject to inspection and testing by Owner or inspectors or representatives appointed by Owner or by the OAR. Whenever requested, CMR shall give Owner and any inspectors or representatives appointed by Owner free access to its Work during normal working hours either at the Jobsite or its shops, factories, or places of business of CMR and its subcontractors and suppliers for properly inspecting materials, equipment and Work, and shall furnish them with full information as to the progress of the Work in its various parts. If any of the Work is covered up without approval or consent of the OAR, or without necessary test and inspection, CMR shall, if required by the Owner, OAR or public authorities, uncover such Work for examination and testing, and shall re-cover same at CMR's expense.
11. Hoisting. The CMR shall procure all hoisting and associated items necessary to perform the Work, including but not limited to the following: hoist rentals, installation and removal, operation and maintenance, concrete base, pads and foundations, testing and maintenance of hoist machinery, electric power and fuel use, premium time use, landings, gates and ramps, equipment and operator enclosures, closing of openings at hoist support penetrations to the structure.
12. Temporary Work. Unless included in a subcontract, the CMR shall, at no cost to the Owner, provide, continuously monitor, and maintain, all temporary bracing, support, shoring and structural upgrades necessary to perform the Work, ladders, temporary stairs, fencing, partitions, temporary enclosures and weather protection

and all temporary rough carpentry, including but not limited to the following: barricades, railings, toe boards, stair treads, protection of finish work and utilities, trash and debris chutes, dust protection, noise abatement measures, vibration protection, outriggers and catchalls, sidewalk bridges, toilet enclosures inside building, hoist landings and gates, cabs, gates, shaft enclosures, dividing screens, closed openings, protection at setbacks, doors and special scaffolds.

13. Construction Administration. The CMR shall provide all construction administrative functions to assure proper supervision, coordination and documentation of the Work in accordance with the Contract Documents and all administration tasks that are reasonably required by the Owner, such as the following:
  1. Supervision of Work. Provide full-time representation at the Jobsite to become familiar in detail with the progress and quality of the Work completed, to determine in detail if the Work is proceeding in accordance with all the requirements of the Contract Documents, to ensure compliance with the Drawings and Specifications for the Project, coordination with other work, and to ensure compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees.
  2. Daily Logs. Maintain a log and electronic database of daily activities for the Project including, at a minimum, the following information in a bound log: the day, date, weather conditions and how any weather condition affected the progress of the Work; time of commencement of Work for the day; the Work being performed; material, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site including representatives of Owner, OAR and Consultant; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. The log and database shall be available to the Owner, the OAR, the Consultant, and the inspectors upon request.
  3. Project Rosters. Provide to the OAR and Owner and maintain at the Jobsite, a roster of companies on the Project with names and telephone numbers of key personnel, and provide a means of identifying workers on site in accordance with the approved security plan.
  4. Job Meetings. Hold weekly progress and coordination meetings with the Project Manager to provide for an easy flowing project and orderly progress of the Work, including implementation of procedures, and to assure timely submittals and expeditious processing of approvals and return of shop drawings, samples, etc. The CMR shall advise the other Project Team members of their required participation in any meeting or inspection, giving each approximately one week's notice, unless such notice is made impossible by conditions beyond the CMR's control. The CMR shall hold Jobsite meetings with the Project Team at least every two weeks or as otherwise required by the OAR or Owner.

5. Project Team Meetings. The CMR, applicable OAR(s) and Consultant shall meet regularly as the progress of the Project requires, but in no case less than every two weeks, to review and agree upon the Work performed to date and to establish the controlling items of Work for the next two weeks. The Owner shall be invited, but not required, to attend any team meetings.
6. Shop Drawing Submittals/Approvals. Work with the Project Team to establish and implement procedures for expediting and processing all Shop Drawings, samples, submittals and detail plans/Drawings, and other documents, maximizing the use of electronic Drawings to the greatest extent possible for submittal and transmittal to the Consultant of such plans for action, and closely monitor their submittal and approval process. The CMR shall be responsible for the initial review and appropriate circulation of submittals. By approving and submitting Shop Drawings, product data, samples and similar submittals, the CMR represents that it has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals that have not been approved by the CMR shall be returned by the OAR to the CMR without review.
7. Material and Equipment Expediting. Closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
8. Payments to Subcontractors. Review and process invoices from subcontractors and suppliers and comply with the payment requirements set forth in Article 11.
9. Document Interpretation. The CMR shall forward to the OAR, all requests for the Consultant to render interpretations of the Drawings or Specifications requested by the subcontractors via submission of a RFI (as provided in the Project Manual). The CMR shall maintain a document control/correspondence log system to promote expeditious handling of all submittals and RFIs. The CMR shall present RFIs in a timely fashion so as to eliminate or reduce scheduling impacts pending resolution of the RFI. The CMR shall advise the Owner when a timely response is not occurring on any of the above.
10. Reports and Project Site Documents. Record the progress of the Project as required by this Agreement or the Contract Documents or as directed by the OAR. Submit written progress reports to the Owner including information on the subcontractor's Work, and the percentage of completion. Keep a daily log available to the Project Team and the permitting authority inspectors.

11. Subcontractors' Punch List. Prepare periodic punch lists for each subcontractor's Work including unsatisfactory or incomplete items and schedules for their completion.
12. Signage. Arrange for all appropriate Project signage, temporary and permanent, necessary for identification, direction, or control for safety and maintenance of traffic. The layout, need and location of all signage must be approved by the OAR, and the signage shall be prepared by a professional sign maker.
13. Printing. Arrange for the printing and distribution of all required bidding documents and Shop Drawings, including the sets required by any permitting authority's inspectors.
14. Cleaning. Cause the subcontractors to keep the premises where the Work is underway reasonably free from accumulations of waste material or rubbish. Upon Substantial Completion of portions of the Work, the CMR shall cause the appropriate subcontractors to remove all rubbish, tools, scaffolding and surplus materials from and about the premises and leave such Work area clean and ready for occupancy.
15. Protection of Property. Take all reasonable precautions for the safety of, and monitor the subcontractors for reasonable protection to prevent damage, injury or loss to all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Jobsite, under the care, custody or control of the CMR or a subcontractor, and other property at the Jobsite or adjacent thereto, including walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The CMR shall cause all subcontractors and other agents of CMR to protect Owner's property from loss or injury that may arise in connection with the Work. Unless specifically included in a subcontract, the CMR shall provide, at its cost, all proper climate control and all heating, cooling and ventilation facilities, equipment, labor and standby personnel, temporary utility equipment systems, distribution and connections, relocation, maintenance and removal of temporary service, as required to construct the Project and protect finished Work until Substantial Completion. The CMR shall pay all utility costs, whether from a permanent or temporary source, including hook-up and service charges until Substantial Completion.
16. Contract Modification Administration. The CMR shall manage all Contract Modifications in accordance with Article 10.
17. Administration of Claims. Refer to Article 15. The CMR shall thoroughly evaluate claims from subcontractors as to their validity under the terms of this Agreement. If the CMR determines that a subcontractor's or supplier's claim is not correctly substantiated on entitlement, time, or quantum, or is

otherwise inaccurate, the CMR shall work with the entity to resolve the deficiencies before submitting the claim.

18. Dispute Resolution. Resolve, in consultation with the Project Team as necessary, all disputes that may arise with or between subcontractors and suppliers. Refer to Article 15.
  19. Substitution of Material. If a subcontractor recommends or proposes substitution of material or other changes in the Work from the material or Work specified in the Contract Documents after bids and/or proposals for that Work have been received, evaluated and awarded, the CMR, subject to the Owner's review and approval, shall evaluate such proposal and make a recommendation to the Project Team. The CMR's recommendation must include the estimated cost of or savings attributable to such Contract Modification, the estimated impact thereof on the Project Schedule and a detailed statement regarding the benefit to the Owner of the proposed substitution. If approved, the CMR shall process a Contract Modification for the proposed substitution.
  20. Substantial Completion. Comply with Article 5.
  21. As-Built Drawings. Unless otherwise required by the BIM Protocol, during the progress of the Work, the CMR shall require all subcontractors, including the site utilities, plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of Drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the Contract Documents. The CMR shall also record all Drawing revisions that have been authorized by Contract Modification that affect wall or partition locations, door and window locations and other template changes. Accurate dimensional locations for all items shall be recorded. The exact routing of conduit runs and underground utilities shall be shown on these Drawings. Each Drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the Work was installed exactly as shown on the Contract Documents, the sheets shall not be disturbed except as noted above.
- 2.8 Project Closeout. In addition to any other Work to be performed during the Construction Phase, as requested by Owner, or as set forth in the Project Manual, the CMR shall perform the following project close-out services:
1. Final Completion. Comply with all Article 5 requirements.
  2. Commissioning. The CMR shall perform all Pre-Commissioning (as defined in Paragraph 1.6) and all other acts that are assigned to it by the Commissioning Plan established in accordance with Paragraph 2.2 and assigned to it by any other Project-specific Commissioning Plans, such as

for the mechanical, electrical and plumbing (M/E/P) systems and the building envelope, that are developed by the Consultant, including, but not limited to any Pre-Functional Checklists, and Functional Performance Test procedures. The CMR shall provide services to ensure a smooth and successful Owner occupancy of the Project and fully cooperate with any third-party commissioning firm. The CMR shall prepare an operation and maintenance manual for building systems and equipment which shall include, without limitation, the following: (i) all operation and maintenance manuals for all equipment and systems; (ii) a complete listing of all vendors and material suppliers (firm name, address, telephone number and contact person for each such vendor and material supplier) cross referenced to the subcontractor responsible for procurement of the particular item purchased from each such vendor and material supplier; (iii) a complete description of all safety precautions to be observed during routine or emergency maintenance and (iv) a consolidated schedule of preventative maintenance activities required for all MEP systems. The CMR shall deliver operating and maintenance manuals for building systems and equipment to the OAR.

3. Start-Up. The CMR, with appropriate subcontractors, shall direct and coordinate the checkout of utilities, operations, systems and equipment to determine the readiness of these systems and assist in their initial start-up and testing, while demonstrating the correct procedures to Owner's personnel.
4. As-Built Drawings. The CMR shall review the completed As-Built Drawings and ascertain that all data furnished on the Drawings are accurate and truly represent the Work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, and related items are involved as part of the Work, the CMR shall furnish true elevations and locations, all properly referenced by using the original benchmark used for the Owner or for the Project. As-Builts for Roadway and Bridge Projects shall be in accordance with VDOT specifications.
5. Owner Occupancy. The CMR shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed by the CMR or subcontractors, "online" in such conditions as will satisfy Owner operational requirements, including coordination of delivery of Owner-supplied furniture, fixtures and equipment, if any.
6. O&M. The CMR shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The CMR shall provide operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training may be videotaped for subsequent presentation to the Owner's personnel.

7. Warranties from Others. The CMR shall secure, assemble and deliver to the Owner all required guarantees and warranties, affidavits, releases, bonds and waivers, manuals, record plans, and maintenance books to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation, including any specific written warranties given by others as required by the Contract Documents, before submitting the final Application for Payment. All warranties shall commence upon Substantial Completion of the Project, unless the warranted Work is not completed or has been rejected, in which case the warranty for the Work shall commence on the completion or acceptance of the Work. The CMR shall ensure that the warranties are properly issued directly to the Owner as the original purchaser warrantee, executed by the warrantor and that any conditions to warranty coverage, such as close-out inspections, be timely addressed and completed. Any breach of the warranties will be a breach of this Agreement.
  
8. CMR Warranty. The CMR warrants that all materials and equipment will be new except where indicated otherwise in the Contract Documents, and that all Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications and will give proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same Work, the CMR further agrees to correct all Work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of **one year** from the date of Substantial Completion for the Project or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications (“Warranty Period”), as well as any damage to the Work resulting from defective design of those components of the Work for which CMR assumes design-build responsibility under the Contract Documents, and damage to materials, equipment, or workmanship deficiencies which develop during construction or during the Warranty Period. In addition, the CMR shall conduct, jointly with the Owner and the Consultant, a warranty inspection **nine (9) months** after the date of Substantial Completion for the Project.

Any repair or replacements done under this Warranty shall comply with the requirements of the Contract Documents and shall be verified by the performance of CMR testing as Owner may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by CMR. CMR warrants such repaired or replaced Work against defective design, materials, and workmanship for a period of twelve (12) months from and after Substantial Completion of the Project or twelve (12) months from the time of such repair or replacement, whichever occurs latest. The CMR only has redesign responsibility for Shop Drawings and



other CMR-initiated designs. Should CMR fail to promptly make the necessary redesign, repair, replacement, and tests, Owner may perform or cause to be performed the same at CMR's expense. CMR shall reimburse the expense incurred by Owner for such remedial work within thirty (30) days from the date of receipt of Owner's invoice therefore. CMR shall be liable for the satisfaction and full performance of the warranties as set forth herein.

The CMR acknowledges and understands that the Warranty hereunder is not an exclusive remedy and that the Owner may avail itself of any and all remedies afforded it under this Agreement and applicable law. The CMR further acknowledges that the Warranty period is not a limitation of liability or a limitation on the period of liability for any other remedy allowed by law.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

- 3.1 Owner's Authorized Representative (OAR). The Owner has retained one or more OARs, who shall provide administration of this Agreement and serve as the day-to-day contact with the CMR. The OARs duties are solely to the Owner. The OARs do **not** have the authority to change the budget, schedule or scope of the Project. All communications between the CMR and the Owner shall be through the applicable OAR(s), following the protocol established by the Project Team. However, the Owner and CMR are not precluded from direct communications. The Owner may be the OAR and the Owner has authority to perform any of the actions that the OAR may perform. The CMR shall copy the OAR with all communications between the Owner and the CMR if such direct communication occurs. Communications by and with subcontractors and suppliers shall be through the CMR, unless the OAR determines direct communication is required to maintain the Project Schedule or quality of Work. The CMR's communications with the Consultant or with the Owner's separate contractors shall be through the OAR.

The OAR will receive and process the CMR's submittals, however, the OAR's processing and review of submittals shall not relieve the CMR of its obligations under the Contract Documents and shall not constitute approval of safety precautions or any means, methods, techniques, sequences or procedures. The OAR is authorized to reject Work which does not conform to the Contract Documents. Whenever the OAR considers it necessary or advisable, the OAR is authorized to require additional inspection, examination or testing of the Work, regardless of the stage of completion or delivery of the Work. However, neither this authority of the OAR nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the OAR to the CMR, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

The OAR will prepare or assist the Owner in preparing Contract Modifications and may authorize minor changes in the Work as provided in Article 10.

The OAR, in conjunction with the Consultant and the CMR, will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and other documents required by the Contract Documents and assembled by the CMR, and will issue a final Certificate for Payment upon Final Completion. Receipt by the OAR or Owner of warranties and other documents at variance with the requirements of the Contract Documents shall not be deemed acceptance of a modification to the Contract Documents or a waiver of any requirement of the Contract Documents.

The OAR will not have control over, charge of or be responsible for construction means, methods, techniques, or procedures, or for safety precautions and programs in connection with the Work. These are solely the CMR's responsibility. However, in the event the Contract Documents expressly require the CMR to use specific means, methods, techniques, or procedures, the CMR shall perform the Work in accordance with those express requirements.

- 3.2 Consultant Agreements. The Owner has retained one or more Consultants to prepare the design and Construction Documents for the Project. The Consultant's services, duties and responsibilities are described in the Agreements between the Owner and the Consultant, a copy of which will be furnished to the CMR upon request.
- 3.3 Site Survey and Reports. The Owner shall provide, upon request and to the extent available, surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, utility locations, and a legal description of the property. No representations as to the availability or accuracy of the surveys and reports are made. The CMR shall be solely responsible for ensuring that the Jobsite is suitable for the Work.
- 3.4 Lines of Authority. The Owner and OAR shall establish and maintain lines of authority for their personnel and shall provide this definition to the CMR and all other affected parties.
- 3.5 Permitting and Code Inspections. Unless otherwise agreed by the parties, the Owner or the OAR will retain the necessary inspector for the Project as required by the Uniform Statewide Building Code for Virginia, and any other inspectors as the Owner deems necessary.

#### **ARTICLE 4 PERFORMANCE OF WORK AND SUBCONTRACTS**

- 4.1 Performance of Work by CMR. Unless otherwise provided in the Contract Documents, the CMR shall provide and pay for, or subcontract for, all labor, services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 4.2 Investigations and Utilities. The CMR represents that it is familiar with the Project Jobsite and has received all information reasonably available concerning the conditions of the Project Jobsite. The CMR represents that it has inspected the location of the Work and has

satisfied itself as to the location and condition thereof, including, without limitation, the location and condition of all structures, topography, ground and surface conditions, as well as utilities and subsurface conditions based on an inspection of reasonably available information and conditions, conditions affecting transportation, access, availability and conditions of roads, legal disposal and handling of materials, availability and quality of labor, availability of water and electrical power, and climatic conditions. The CMR shall undertake reasonable further investigations and studies as part of CMR Preconstruction Services to help determine the location and condition of all roadways, railways, drainage facilities, structures, utilities, surface and subsurface conditions. The failure to acquaint itself with any applicable conditions shall not relieve the CMR from its responsibilities to fully perform the Work, nor shall it be the basis for any request for additional time or compensation. The CMR shall exercise special care in executing Work in proximity of known utilities, improvements and easements, shall coordinate with the OAR and the owner of any such utilities to determine the necessity for relocating or temporarily interrupting any utility or service, shall schedule and coordinate the Work around any such relocation or service interruption and shall properly shore, support and protect all such utilities and facilities. The CMR shall take immediate action to restore any disruption in utility service caused by the CMR or any Subcontractor, agent, employee or anyone else for whom the CMR is legally liable. Within 5 days of a written demand, the CMR shall pay to the Owner all costs incurred by the Owner or on behalf of the Owner as a result of any disruption in utility service. If the CMR fails to make such payment, the Owner may withhold the amount from any future payment.

- 4.3 Field Conditions. The CMR shall take field measurements, verify field and subsurface conditions and carefully compare such field measurements and conditions and other information known to the CMR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be immediately reported in writing to the Project Team. If the CMR performs any construction activity which the CMR knows or reasonably should have known contains an error, inconsistency or omission, the CMR shall be responsible for such performance and shall bear the cost for correction.
- 4.4 Self-Performance of the Work. Upon written authorization of the Owner, the CMR construction management team partners and subconsultants and related entities, such as parent corporations, affiliates, subsidiaries, or other entities with a common ownership or management may use their own CMR may use their own forces to perform a portion of the Work. When authorized in advance to submit a competitive bid, the CMR (or other entity described above) must submit its bid to the OAR, at least forty-eight hours prior to the public bid opening date and time. Self-performed Work will be paid in accordance with the CMR's submitted bid, as long as two other higher competitive bids have been received. If two other higher competitive bids have not been received, payment will be made in accordance with the CMR's lump sum bid if the bid is within 10% of the Owner's independent cost estimate. Otherwise, payment will be made in accordance with the Force Account procedures contained in Article 10. By submitting a bid, the CMR acknowledges and declares that the Contract Documents are sufficient to enable the CMR to complete the Work as shown in the Contract Documents or, if not specifically shown, to perform the activities which may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes,

regulations, or as otherwise required by the Contract Documents. The limitation on self-performed work may be exceeded only upon written authorization from the Owner in accordance with the Owner's Policies.

4.5 Owners Right to Disapprove Subcontractor or Supplier. The Owner retains the right to withhold approval of the award of a subcontract or supplier to any specific bidder if, in the Owner's sole judgment, the bidder is not sufficiently qualified or responsible. If the Owner objects to a subcontractor or supplier award by CMR, the CMR shall select the next lowest qualified and responsive bidder.

4.6 No Third-Party Beneficiary or Relationship. Nothing in this Agreement, the subcontracts, or in purchase orders issued by the CMR shall create any contractual relationship between the Owner and any subcontractor or supplier (except as may be necessary to provide the required indemnification and warranties). The subcontracts and purchase orders shall specifically state that no such third-party relationship is created hereby. However, the Owner is mutually recognized as a third-party beneficiary of all such subcontracts and the CMR shall expressly include such beneficiary rights in the subcontracts. There are no other third-party beneficiaries of this Agreement.

4.7 Required Subcontract Provisions.

4.7.1 Subcontractual Relations. By an appropriate written agreement, the CMR shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the CMR by the terms of the Contract Documents, and to assume toward the CMR all the obligations and responsibilities that the CMR assumes toward the Owner and the Consultant. All subcontracts shall preserve and protect the rights of the Owner, OAR(s) and Consultant under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights.

4.7.2 The CMR shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents, such as reduced bonding and insurance requirements. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

4.7.3 Not used.

4.7.4 All subcontracts (and, where appropriate, sub-subcontracts) shall include the following terms:

a. DAMAGES FOR DELAY

The subcontractor expressly agrees that the Damages for Delay provision of the CMR Agreement with the Owner applies to all requests for compensation and claims submitted by the subcontractor to the CMR for

submission to the Owner and that provision constitutes the sole and exclusive remedies for delays and changes in the Work.

- b. Supervision. The subcontractor shall provide field (on-site) supervision through a named superintendent. In addition, the subcontractor shall assign and name a qualified employee for scheduling its Work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by the subcontractor to supervise and schedule its Work.
- c. Any claim by the subcontractor for delay or additional cost must be submitted to CMR within the time and in the manner in which the CMR must submit such claims to the Owner, and that failure to comply with the notice and substantiation requirements shall result in the waiver of such claims.
- d. The subcontractor expressly acknowledges that the payment bond provided by CMR pursuant to this Agreement is a substitute for the right to claim a lien on the Project, and that any claims for nonpayment shall be made against the bond in accordance with the Code of Virginia.
- e. The subcontractor shall assume toward the Owner all obligations and responsibility that the subcontractor has to the CMR in the event that the CMR Agreement is terminated and the Owner desires to assume the subcontract.
- f. Unless otherwise approved by the Owner in accordance with Article 10, all subcontractor change orders must include a detailed breakdown of the labor, labor burden, equipment, materials, sales taxes and allowed mark-up.
  - (i) Labor rates must be independently verified as reasonable by the OAR and submitted to the Owner for approval. Once labor rates have been established, the rates shall remain effective for all subcontractor modifications for the duration of the Project, except that an annual increase of 3% will be allowed.
  - (ii) The maximum labor burden rate on subcontractor change orders shall not exceed 42% for straight time and 30% for overtime. No additional payment will be made for labor burden items including but not limited to payroll taxes, workers compensation, medical, vision and dental insurance, pension, 401k and other types of retirement benefits, profit-sharing plans and paid time-off. For union labor, the burden rate shall be the actual amount that is defined by the union agreement in effect when the change order is negotiated.

In the event a subcontractor is enrolled in a Contractor's Controlled Insurance Program (CCIP), if applicable, the labor burden rate will be reduced by the amount of workers' compensation premiums that otherwise would have been incurred by the subcontractor.

- (iii) Equipment and material costs must comply with Article 8.
- (iv) Mark-up is defined as the compensation for the subcontractor's overhead and profit, and includes all costs associated with general conditions, all home office costs, supervision (home office staff, project managers, project engineers, superintendents, foremen and all salaried employees of the subcontractor that have been assigned to the Project), cost estimating services, consumables, small tools valued at \$1200 or less, layout, coordination, as-built drawings, BIM services, BIM expenses, subcontractor insurance, subcontractor subguard or other default insurance, subcontractor bonds and all other items other than the actual labor, allowed labor burden, equipment, materials, tax and mark-up. No separate payment shall be allowed for any expense that is included in the mark-up unless a time extension and extended general conditions costs are approved in accordance with Article 10. Unless otherwise agreed by the Owner, the amount of mark-up allowed for subcontractors shall be applied upon the net value of the change for changes that include both additions and credits. The total amount of mark-up for all subcontractors affected by a subcontract modification, regardless of tier, shall not exceed 15% of the total labor, equipment and materials. Deductive change orders shall include a credit to the Owner of 5% for mark-up on the deductive amount if the OAR determines that the change reduces the time for completion or reduces the general conditions of the subcontract.

- g. Within five (5) business days of the effective date of a subcontract, the subcontractor shall submit to the CMR, for review and submission to the OAR for approval, the subcontractor schedule of values. Failure to do so may result in delays in processing the initial payment.
- h. The subcontractor shall comply with all public records, audit and accounting obligations imposed on the CMR in the CMR Agreement, including Article 10.6.

4.8 Responsibilities for Acts and Omissions. The CMR shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the CMR.

4.9 Not Used.

- 4.10 Labor Harmony. CMR hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by CMR and its subcontractors for Work on the Project shall work in harmony with and be compatible with all other labor being used by other contractors now or hereafter on the Jobsite of the Project. CMR further agrees that this provision will be included in all subcontracts of the subcontractors as well as the CMR's own subcontracts; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as provided by Article 3 Chapter 4, Title 40.1 and §40.1-58 of the Code of Virginia.
- 4.11 Use of Site and Coordination with Others. The CMR shall confine operations at the Jobsite to the limits of construction shown on the Drawings and shall not unreasonably clutter the site with materials or equipment. The CMR shall not dispose of debris or waste material on the Owner's property. At no additional cost to the Owner, the CMR shall take all actions necessary to coordinate the Work with other activities at, near or related to the Project, reasonably known at the time of execution of the GMP, including, but not limited to, the ongoing operations of the Owner, the users of the Owner's facilities and contractors for separate projects, if any. The CMR shall be responsible for controlling all labor employed by it and its subcontractors so as to avoid any disruption of or disharmony with other labor being used by separate contractors now or hereafter working on the Owner's property. The CMR further agrees that this provision will be included in all of its subcontracts. The CMR shall promptly afford the Owner and separate contractors reasonable opportunity for storage of their materials and equipment and performance of their activities and shall coordinate the CMR's construction and operations with the separate contractors. If the proper execution of the Work depends upon construction or operations by the Owner or a separate contractor, the CMR shall, prior to proceeding with the affected portion of the Work, promptly report to the OAR, with a copy to the Owner, apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution. Failure to report discrepancies or defects shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the CMR's Work, except as to defects which are not discoverable at that time through the exercise of reasonable diligence. The CMR shall promptly remedy damage caused by the CMR to complete or partially complete construction or to property of the Owner or separate contractors.
- 4.12 Separate Contractors. When separate contracts are performed within overlapping limits of construction, or areas which might result in congestion or interference, each contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the work being performed by separate contractors. Any difference or conflict which may arise between the CMR and separate contractors shall be referred to the OAR for resolution in accordance with this Agreement, including but not limited to, all notice and substantiation requirements. If a separate contractor initiates legal or any other proceedings against the Owner on account of any damage or delay alleged to have been solely caused by the CMR, the Owner shall notify the CMR, who shall defend and indemnify the Owner in such proceedings at its own expense, or at the Owner's option, pay all defense costs of the Owner including attorney's fees, and if any judgment or award against the Owner arises therefrom, the CMR shall pay or satisfy it and shall reimburse the Owner for all attorneys'

fees and court or other costs which the Owner has incurred over and above those paid directly by the CMR.

- 4.13 Cutting and Patching. The CMR shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The CMR shall not damage in whole or in part the Work, other work of the Owner or of separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The CMR shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The CMR shall not unreasonably withhold from the Owner or a separate contractor the CMR's consent to cutting or otherwise altering the Work.
- 4.14 Cleaning Up. The CMR, on a daily basis, shall keep the premises and surrounding area free from the accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Work, the CMR shall remove from and about the Project all waste materials, rubbish, the tools, construction equipment, machinery and surplus materials caused by operations under this Agreement. The CMR shall not dispose of debris or waste material on the Owner's property or in waste containers (dumpsters) leased by the Owner without prior approval of the Owner. If the CMR fails to keep the Jobsite clean as provided in the Contract Documents, then, following the Owner's 48 hour written notice to the CMR, the Owner may take appropriate action to clean the Jobsite and charge such costs to the CMR. If a dispute arises among the CMR, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.
- 4.15 Access to the Work. At all times, the CMR shall, at no additional cost, provide the Project Team, Owner's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by Owner access to the Work subject to the safety rules and insurance requirements of the particular Work area. This access shall include the CMR's providing reasonable assistance, including, but not limited to, providing ladders, equipment and workers to provide access to the Work or remove/replace heavy objects. When a GMP is funded in whole or in part with VDOT funds, the VDOT shall have the right to access and inspect the Work and materials.
- 4.16 Prohibition of Alcohol and Other Drugs.
- A. § 2.2-4312, Va. Code shall be applicable. It provides as follows:
- During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor



that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

B. The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site:

- i. The manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically-prescribed use of prescription drugs; and
- ii. The impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

## **ARTICLE 5 SCHEDULE AND COMPLETION**

- 5.1 **Time. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT AND THE PROJECT.** The parties acknowledge that the terms of this Agreement and all Addenda have been negotiated based upon the orderly and continuous progress of the services through completion of the Project.
- 5.2 **Project Schedule.** A GMP proposal shall include a Project Schedule and a Project Substantial Completion date, a Project Final Completion date and an Owner occupancy date, if different from the above, and shall include other mandatory milestone dates for completion of the Project as directed by Owner or Consultant. The CMR agrees to complete the construction in accordance with the Project Schedule that is included with each approved GMP.
- 5.3 **Liquidated Damages.** The CMR acknowledges that failure to complete the Project within the Project Schedule and the milestone dates set forth in an approved GMP, or as modified by a Contract Modification, will result in substantial damages to the Owner, for which the CMR shall be fully liable through the assessment of Liquidated Damages. The Owner and CMR recognize the difficulty in ascertaining the Owner’s actual damages in the event of unexcused delay by CMR and agree that Liquidated Damages as specified in an approved GMP shall represent a reasonable and good faith estimate of such damages and shall not constitute a penalty. Owner and CMR agree that such Liquidated Damages shall be the Owner’s sole and exclusive remedy for CMR’s delay. If a GMP does not include Liquidated Damages for a milestone date or for Substantial or Final Completion, the Owner reserves the right to assess against the CMR all actual and consequential damages incurred by the Owner, including but not limited to damages claimed by other contractors and third-

parties arising from or related to CMR's failure to achieve the milestone dates. If the Owner, in its sole discretion, determines that Liquidated Damages are due, the amount of Liquidated Damages shall be subtracted from the amount of retainage on any remaining Application for Payment. If there is insufficient retainage to compensate the Owner for the Liquidated Damages, the CMR and its Surety shall pay to the Owner the amount due within ten (10) days of receiving written notification of the shortage. Failure to make the required payment to the Owner will result in the Owner's enforcement of its right to receive the payment in any manner allowed by law. The CMR's Contingency shall not be used to pay for Liquidated Damages.

- 5.4 Progress of the Work. The CMR shall cooperate with the OAR in order to maintain the progress of the Work in accordance with the most current Project Schedule. If the Owner or OAR determines that the CMR is failing to maintain the progress of the Work, the CMR must, within seventy-two (72) hours of written request of the OAR, submit a written response detailing the CMR's plan of action to recover lost time in order to maintain the progress of the Work in accordance with the accepted schedule. In such event, the CMR shall comply with the OAR's written orders to take whatever steps are necessary to recover lost time and maintain the progress of the Work at no additional cost to Owner. These steps may include, but are not limited to, re-sequencing the Work activities, increasing the number of shifts, workforce, supervision, work days, overtime operations, equipment resources, or expediting delivery of materials or equipment.
- 5.5 Surety Prosecution of Work. In addition to other remedies available to the Owner, if the CMR fails to maintain the progress of the Work in accordance with the Project Schedule set forth in an approved GMP or as modified by a Contract Modification, the Owner may, upon written notice to the CMR and its Surety, order the CMR to suspend or cease all or a portion of the Work and the Owner may demand that the Surety prosecute all or a portion of the Work in accordance with the Contract Documents. Failure of the Surety to commence performance to the reasonable satisfaction of the Owner within fifteen (15) days of receipt of such notice shall be grounds for the Owner to prosecute the Work at Surety's and CMR's expense.
- 5.6 Substantial Completion. The date of Substantial Completion is the point at which, as certified in writing by the CMR and agreed to by the Owner, OAR and Consultant, that the Project is at the level of completion and in conformance with the requirements of the Contract Documents, where:
1. The Certificate of Occupancy or Completion has been issued by the City of and all required sign-offs by the Authorities Having Jurisdiction (AHJ) and other public regulatory authorities have been given for the Project. The date of the Certificate of Occupancy or Completion does not establish the date of Substantial Completion.
  2. The Owner has received all required warranties (draft form), Operation & Maintenance Manuals, training, As-built drawings and other documentation required by the Contract Documents for the Project; and

3. The Owner will have complete use or occupancy and may use, operate, and maintain the Project in all respects, for its intended purpose and without undue interference by the CMR's Final Completion efforts.

When the CMR considers that the Project or designated portion thereof is close to being Substantially Complete, the CMR shall prepare and submit to the OAR a comprehensive punch list of items to be completed or corrected and the schedule to complete each item. The punch list shall be transmitted to the OAR a minimum of 5 business days prior to CMR's anticipated date of achieving Substantial Completion. The CMR shall proceed promptly to complete and correct items on the punch list. Failure to include an item on the punch list does not alter the responsibility of the CMR to complete all Work in accordance with the requirements of the Contract Documents.

Upon notice to the OAR by the CMR that the Work is ready for the Substantial Completion Inspection, the OAR and Consultant will conduct a preliminary inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the preliminary inspection discloses any item that is not in accordance with the requirements of the Contract Documents, whether or not included on the CMR's punch list, the OAR shall so notify the CMR and the CMR shall add the items to its punch list. The CMR shall proceed to complete or correct every item on the revised punch list. The CMR shall request re-inspection from the OAR and Consultant as necessary. If the OAR and Consultant determine that the Project is ready, the Substantial Completion Inspection will be scheduled at a minimum of three (3) business days after the preliminary inspection.

The OAR, the Consultant and others, during the Substantial Completion Inspection, will prepare the Owner's preliminary Substantial Completion punch list of all remaining Work to be completed or corrected. The OAR shall combine the items from all parties into one punch list. Failure to include an item on the punch list does not alter the responsibility of the CMR to complete all Work in accordance with the requirements of the Contract Documents. The OAR shall distribute the punch list to the CMR within a maximum of fifteen (15) business days after the date of Substantial Completion. All items on the punch list must be completed prior to the date of Final Completion.

When the Project or designated portion thereof is Substantially Complete, the OAR shall prepare a Certificate of Substantial Completion signed by the OAR and Consultant which shall establish the date of Substantial Completion for the Project, shall establish the responsibilities of the Owner and CMR for security, maintenance, operations, cleaning and housekeeping, heating and cooling, utilities, damage to the Work and insurance, and shall fix the time within which the CMR shall finish all items on the combined punch list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted to the CMR for appropriate acceptance and signature. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Project or designated portion thereof unless otherwise provided in the Contract Documents.

- 5.7 Partial Occupancy or Use. The Owner may occupy or use any completed or partially completed portion of the Work at any stage and, if the Owner chooses such partial occupancy, the CMR and Owner shall designate by an agreement the conditions of such

partial occupancy, provided such occupancy or use is consented to by the Owner's insurer and authorized by public Authorities Having Jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and CMR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, operations, cleaning and housekeeping, heating and cooling, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Even if an agreement is reached as to partial occupancy or use, the parties shall still comply with the requirements for Substantial Completion under the Contract Documents for that portion of the Work. Consent of the CMR to partial occupancy or use by the Owner shall not be unreasonably withheld.

Immediately prior to such partial occupancy or use, the Owner, OAR, CMR and Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work which is not in conformance with the requirements of the Contract Documents.

- 5.8 Final Completion and Final Payment. Final Completion for the Project shall be achieved by the CMR within one hundred and twenty (120) days of Substantial Completion unless otherwise specified in the Contract Documents. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment for that Project, the Consultant and OAR will promptly make such inspection with the CMR and, when the Consultant and OAR find the Work acceptable and fully performed, including the delivery of all close-out documentation required in the following paragraph and all Models and data required by the BIM Protocol, the OAR will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of the OAR's observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the amount noted in the final Certificate for Payment for that Project has been earned, subject to the Owner's claims, Liquidated Damages or back charges, if any. The OAR's execution of the final Certificate for Payment will constitute a further representation that the conditions precedent to the CMR's being entitled to final payment for that Project has been fulfilled.

Neither final payment nor final retainage shall become due until the CMR submits to the OAR all close-out documentation, which is defined as all of the following: (1) an Affidavit of Payment of Claims stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with this Project less retainage; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner; (3) a written statement that the CMR knows of no substantial reason that the insurance will not be renewable to cover the period

required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by the Owner; (6) all required As-built Drawings, operating and maintenance instructions and manuals, and acceptable warranty/guaranty documents; (7) the CMR's Final Release Form for the Project; (8) a Certificate of Final Completion has been issued by the CMR and the Consultant; (9) the Final Contract Modification, reconciling all budget line items with actual payments made or due, determining the final GMP amount; and (10) Final asset log in a form that is acceptable to the Owner (see Article 8). If a subcontractor refuses to furnish the release required by the Owner, the Owner may retain all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees. However, the Owner may elect not to retain any monies if the CMR certifies that it is proceeding diligently and in good faith to resolve its dispute with the subcontractor in accordance with the subcontract and the surety consents to the Owner's payment to the CMR despite such claim.

Acceptance of final payment for the Project shall constitute a waiver of all claims by the CMR and all subcontractors and suppliers, except those claims previously made in accordance with Article 15 and identified by the CMR as unsettled on the final Application for Payment for the Project. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the CMR shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, the CMR shall provide to the Owner, along with the Affidavit of Payment of Claims, an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by the CMR and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between the CMR and one or more Subcontractors or Suppliers as to the amounts owed to the Subcontractors or Suppliers, the Owner may, in its sole discretion, pay such portion of the moneys due to the CMR which is claimed by the Subcontractor or Supplier into a Virginia Court or Federal Court sitting in Norfolk, Virginia, in the manner provided by law. Said payment into court shall be deemed a payment to the CMR. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof. Final payment shall not relieve CMR of any obligation under this Agreement or any approved Addendum, including the warranty, guaranty and indemnification provisions and such other provisions that survive the termination of this Agreement, including liability for defective Work. Final payment does not constitute a waiver of claims by the Owner.

**ARTICLE 6**  
**GUARANTEED MAXIMUM PRICE (“GMP”), CONSTRUCTION CONTINGENCIES**  
**AND ALLOWANCES**

- 6.1 Guaranteed Maximum Price Proposal (GMP). Upon request by the Owner, the CMR shall prepare and submit to the Owner a GMP Proposal that complies with the requirements of this Agreement. The Owner, in its sole discretion, may request a separate GMP for each Project Component. The GMP Proposal shall not include matters that conflict with or attempt to renegotiate provisions set forth in this Agreement.
- 6.2 Scope of GMP Work. The CMR acknowledges that the Construction Documents may be incomplete at the time the CMR delivers a GMP Proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, a GMP Proposal shall include all costs for the Work required by the completed Construction Documents, and upon execution of a GMP, the CMR shall not be entitled to any increase in a GMP if the Work required by the completed Construction Documents (i) is required by the Agreement, (ii) is reasonably inferable from the incomplete Construction Documents, (iii) is consistent with the Owner’s programmatic goals and objectives, (iv) is consistent with the Owner’s Design and Construction Standards and the general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents. A GMP is only subject to modification for changes in the Work made strictly in accordance with Article 10. The CMR’s listing of staff for specific durations and Owner acceptance thereof does not in any way diminish the CMR’s obligation to provide adequate staff required to complete the Project.
- 6.3 GMP Proposal Contents. A GMP Proposal shall include one printed set and one electronic set of the plans, specifications and other documents from the Consultant and upon which the GMP is based and shall acknowledge on the face of each set that it is the set upon which the CMR based its GMP. The CMR shall send one set to the OAR along with its GMP proposal, while keeping one set and returning one set to the OAR for return to the Consultant. The GMP proposal shall be submitted in tabbed binders, and electronically or as otherwise directed by the OAR. A GMP proposal shall include the following sections, unless otherwise directed by the OAR:
1. Copy of the Advertisement to Solicit Bids and List of Prequalified Bidders, as applicable
  2. Project Description (brief description of the Project and an organizational chart of specific representatives of the CMR’s Project Team)
  3. Schedule of Values (GMP Summary) —in a format that is acceptable to the Owner, including subtotals for the following elements:

- (a) the Direct Cost of the Work, including the names of recommended subcontractors and including a subtotal of allowances on a separate line
  - (b) the General Conditions estimate,
  - (c) the CMR Fee at the rate set forth in the CMR's Price Proposal attached as Exhibit B (for estimating purposes only, the amount of the CMR Fee included in the GMP Proposal may include contingency values),
  - (d) the CMR Contingency, if necessary,
  - (e) All other markups allowed by this Agreement, specifically including insurance and bonds at the rates set forth in the CMR's Price Proposal attached as Exhibit B, and
  - (f) the Guaranteed Maximum Price for the Project or Project Component, as applicable, which shall be the total sum of items (a) through (e)
4. Detailed Estimate of the Direct Cost of the Work, in a form acceptable to the Owner
  5. General Conditions Estimate, listing staff positions, proposed rates and durations (rates will be audited before payment will be made)
  6. List of Alternates and Unit Prices
  7. List of Allowances
  8. Liquidated Damages in an amount specified by Owner, if any, and may include a list of milestone or completion dates at which the remaining unused CMR's Contingency, if any, will be reduced to zero or other sum stated in the GMP that reflects the remaining risk on the Project
  9. Value Engineering Recommendations
  10. Assumptions and Clarifications if any, divided into the following categories: Technical and Schedule
  11. Project Schedule
  12. List of Contract Documents
  13. Subcontractor Bid Requirements
  14. A Bid Tabulation for each Bid Package being recommended for award, with a memorandum explaining the recommendation and a copy of all bids received
  15. Subcontractor Licensing Information, as relevant

16. Additional Information requested by OAR or Owner

6.4 GMP Negotiations and Approval. A GMP Proposal shall form the basis of negotiations between the CMR and the Owner for the Project. The Owner shall have no obligation to accept any GMP, regardless of that proposal's relationship to the Owner's budget or the most current estimate or for any other reason. After each negotiation session, unless agreement is reached, the Owner shall determine if further negotiations are warranted. If the negotiations reveal any inconsistencies or inaccuracies in the information presented in a GMP proposal, the CMR will make adjustments to the GMP Proposal as necessary. Once negotiations progress to the point that the Owner considers the proposed GMP to be acceptable, the CMR may be required to assist with a public presentation of the GMP to the Owner's Board of Directors and/or at other public meetings as directed by the Owner. Each approved GMP Proposal will be executed as a formal Addendum to this Agreement. No Addendum shall be binding until the Owner delivers a fully executed Addendum to the CMR.

If the Owner determines that the negotiations are not successful, the Owner shall so notify the CMR and take possession and ownership of all documents produced for the design and bid phase, pay the CMR for any remaining undisputed compensation for Preconstruction Services, and proceed as follows:

- a. Reject the GMP Proposal and direct the Consultant for the Project and the CMR to investigate, redesign, develop for Owner approval value engineering possibilities, and other cost savings and to resubmit a new, lesser, GMP proposal. This may, at the Owner's option, include reduction in scope; or,
- b. Reject the GMP Proposal and select a new CMR for the Project or any specific GMP, bid the work to another contractor or otherwise complete with other forces or take such action, if any, that the Owner may in its sole discretion determine is in its best interest. In this event, the CMR shall not perform, nor be compensated for, any services for the Project other than the Preconstruction Services already completed for the Project, except as authorized by the Owner, and the CMR shall be compensated for all required Work and services completed to the satisfaction of the Owner through the date of Owner's notice of rejection or termination. In the event any option under this Paragraph 6.4 is chosen by the Owner, the CMR shall immediately turn over to the Owner all Drawings, Specifications and other Project related documentation, and coordinate its other work, if any, in accordance with Paragraph 2.7.7.

6.5 Accurate Costs. By submitting a GMP or Preconstruction Services proposal, the CMR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of additions; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the CMR shall be reduced if the Owner determines such amounts were knowingly materially inaccurate, incomplete, or non-current factual unit costs.



- 6.6 Guaranteed Maximum Price. Once a GMP Proposal is approved by the Owner, any mistakes in estimating costs or Work in the GMP shall not serve as the basis for a claim by CMR or upward adjustment to the GMP. Once approved by the Owner, the GMP will not be increased for any additional CMR costs. The GMP shall be construed at any given point in time to include any firm fixed adjustments (upward or downward) thereto made in accordance with the relevant provisions of the Contract Documents. A GMP is not subject to price escalation or de-escalation related to or arising from market fluctuations in the price of labor or materials and is not subject to any increase, except for changes allowed and issued strictly in accordance with the Article 10. A GMP shall include all taxes that are or foreseeably will be required for completion of the Work. The CMR shall not be entitled, under any circumstances, to any increased cost of doing business, including but not limited to, increased costs of materials, labor, trucking, and fuel. The actual price paid by the Owner for the Project identified in the GMP Addendum shall be the lesser of (A) the maximum Guaranteed Maximum Price or (B) the sum of (i) the actual incurred Direct Cost of the Work in accordance with Article 8, including Allowances approved and incurred in accordance with Paragraph 6.8, (ii) the approved General Conditions Costs, and (iii) the Fee in accordance with Article 9.

The Norfolk Airport Authority retains sole authority to authorize any Contract Modification which would cause an increase of more than twenty-five percent (25%) of an originally agreed upon GMP.

6.7 Contingency.

6.7.1 A GMP may include an agreed upon sum as the CMR's Contingency which shall be identified as a separate line item in the GMP's Schedule of Values.

6.7.2 The CMR's Contingency shall be utilized to compensate for the increased costs incurred by the CMR due to Unforeseen Circumstances relating to construction of the Project which resulted in an unavoidable increase in costs. If the CMR fails to include all of the required scope of Work in the bid packages or estimate, CMR Contingency may be used to purchase the omitted scope, until the CMR Contingency balance reaches zero or until the balance equals the anticipated subcontractor modifications, as determined by the Owner. All requests to use the CMR's Contingency shall be submitted in the form of a Contingency Request. Charges to the CMR's Contingency shall not become due and payable until the Contingency Request is approved by the Owner in writing. If the CMR's Contingency reaches zero, any cost overruns or charges that could have been charged to the CMR's Contingency shall be the sole responsibility of the CMR.

6.7.2.1 If bids are received below the applicable line items in a GMP, the surplus will be added to the CMR's Contingency for the Project. If bids exceed the applicable line items in a GMP, the deficiency will be charged to the CMR's Contingency for the Project, however such events shall not be cause to increase a GMP. The CMR agrees to review and accept bids for the applicable line items in a GMP within 90 days of a GMP being established.

6.7.2.2 Once all subcontracts anticipated by a GMP have been awarded the Owner may require the CMR to reduce the CMR's Contingency to an amount as agreed to by the parties to reflect the CMR's risk from that point in the Project forward.

6.7.2.3 Upon 50% completion as defined in Paragraph 11.4 or completion of certain milestone dates or completion of other stages as set forth in a GMP, the Owner may, in its sole discretion, require the CMR to execute a Contract Modification to reduce the remaining unused CMR's Contingency to an amount that reflects the remaining risk on the Project as determined by the Owner in its sole discretion.

6.7.2.4 Upon Final Completion of the Project, any remaining CMR's Contingency, if any, shall be reduced to zero by a Contract Modification and the CMR shall have no entitlement to the balance.

6.7.3 When the CMR proposes to use Contingency, the CMR shall prepare a Contingency Request, identifying the amount sought to be charged to Contingency, the reasons why the amount should be charged to Contingency and demonstrating to the satisfaction of the Owner that the costs to be incurred are necessary for the Work. At all times, the CMR shall avoid and mitigate Contingency costs whenever possible. Before payment or as part of an audit, the Consultant and the OAR shall have authority to verify the actual costs incurred. No costs may be charged to Contingency until the Owner approves the Contingency Request in writing.

6.8 Allowances. Allowances will only be used in situations where the payment to a third-party service provider, such as a utility company, is unknown at that time due to an incomplete scope of Work, or a portion of the Work is not well-defined, or there are known factors that could significantly increase the cost to perform a specific portion of the Work. In such a case, upon mutual agreement between the Owner and the CMR, an Allowance may be included in a GMP to account for the maximum possible additional costs that may arise. Items covered by an Allowance shall be supplied for such amounts and by such persons or entities as the Owner may direct (when applicable). Allowance costs may be invoiced without additional approval by the Owner, only when a subcontract award or modification is not required (such as power, water, sewer). All other Allowance expenses must be approved by the Owner before payment will be made. Unless otherwise provided in the Contract Documents or in writing by the Owner:

1. Materials and equipment under an Allowance shall be selected by the Owner;
2. Allowances shall cover the cost of labor, materials, supplies and equipment delivered at the site and all required taxes, less applicable trade discounts;
3. No Allowance amount is due and payable unless the Application for Payment includes appropriate substantiating cost data that reflects the actual costs or other amount approved by the Owner. The Allowance

amount may not be exceeded without a prior Contract Modification approved by the Owner.

4. Upon completion of the Project, the CMR shall have no entitlement to any remaining Allowance amount and the remaining Allowance amounts, if any, shall be reduced to zero by transferring the entire balance to the Owner's Contingency.

## **ARTICLE 7 GENERAL CONDITIONS COSTS**

7.1 General Conditions Costs Defined. General Conditions Costs are limited to the following reimbursable expenses only:

- (i) Actual salaries for construction management personnel, which is defined as the base compensation, excluding any bonus, incentives, cost of living adjustments or any other adjustments, for the construction management staff (including CMR staff and extension of staff provided by small or minority business team members) that are identified by name, title or position and duration in the SOQ, a GMP Addendum, or Contract Modification; Simultaneously with the submission of a proposed addendum, the CMR shall provide salary documentation for all identified individuals to the Owner for review and approval. Once salary rates have been approved, the rates for each position will remain valid for the duration of the Project. Any promotions or new positions must be approved by the Owner in advance. No payment will be made for individuals whose salary has not been approved; Verified time sheets shall be submitted with each payment application upon request;
- (ii) Labor burden on construction management staff will be limited to the fixed rate of 32% on the salaries allowed in the previous paragraph for all expenses related to employment of personnel, including but not limited to taxes, insurance and benefits, however described; and Costs of construction requirements that are approved by the Owner; all costs shall be reasonable and necessarily incurred for the Project, as determined by the Owner in its sole discretion; construction requirements shall be procured in accordance with Article 2 (unless otherwise agreed in writing by the Owner). A higher labor burden may be allowed if actual costs are documented and agreed to by the Owner in writing.

7.2 Preconstruction Services Compensation. The Preconstruction Services shall include the performance of all General and Preconstruction Services required for the Preconstruction Phase of the Project, including design review services through 100% Construction Documents for the Project and all other services specified in Paragraphs 2.2 and 2.6, some of which may be performed concurrently with Construction Phase Services. Upon the Owner's issuance of a Notice to Proceed with the Preconstruction Phase of the Project or any part thereof, the Owner agrees to compensate the CMR for the General and

Preconstruction Services at the rates set forth in the CMR's Preconstruction Phase Price Proposal, up to the not-to-exceed amount set forth in the attached **Exhibit B**, upon satisfactory performance of the Services.

- 7.3 Construction Phase. Upon the Owner's issuance of a Notice to Proceed with the construction of the Project or a portion thereof, the Owner agrees to reimburse the CMR for its incurred Construction Phase General Conditions Costs, up to the amount of a GMP.

## **ARTICLE 8 DIRECT COST OF THE WORK**

- 8.1 Direct Cost of the Work. Upon the Owner's issuance of a Notice to Proceed for the Project or portion thereof, the Owner agrees to pay the CMR for the following items which constitute the Direct Cost of the Work, all of which are subject to audit and the Owner's determination of reasonableness:

1. Payments due to or made by the CMR to Subcontractors retained by the CMR in accordance with this Agreement to perform any portion of the Work. Subcontractors' invoices shall be provided to the Owner as actual cost documentation, along with proof of payment, upon Owner's request;
2. Costs of premiums for accepted insurance policies as proposed in the CMR's Price Proposal attached as Exhibit B or other rate for insurance agreed to in writing by the Owner based upon the various CCIP options or any combination thereof;
3. Cost of all materials required to complete the Work that are incorporated into the Project, plus a reasonable amount allowed for waste, as determined in the Owner's sole discretion and plus applicable sales taxes. Insurance and storage of materials is reimbursable only if approved in advance by the Owner. Invoices, prorated to these allowed quantities, shall be provided to the Owner as actual cost documentation, along with proof of payment, upon Owner's request.
4. Payment for equipment costs will differentiate between four types of equipment: (1) contractor-owned equipment; (2) leased equipment; (3) rented equipment; and (4) purchased equipment. Purchased equipment will remain the property of the Owner and shall be returned to the Owner at the end of the Project unless equitable financial arrangement is obtained between the Owner and the CMR. If the equipment is owned by the CMR or Subcontractor (any tier) the equipment rental rates shall not be more than fifty percent (50%) of the properly adjusted rates indicated in the most recent Rental Rate Blue Book by Dataquest, Inc., ("Blue Book), applicable to the date the work activity was approved for the period of actual use of such equipment. Maximum rates for equipment not listed in the Blue Book shall be established by capacity comparisons to other listed equipment. No overtime charges shall be made for equipment operating longer than 8 hours per day and only daily or prorated weekly or monthly rates per day shall be allowed depending on the actual rental period. The equipment daily rates shall be based on 1/30th of the monthly rates, and hourly rates (not to *exceed* a total of 8 hours per day) shall be based on 1/240th of the monthly rate. Operating costs, if not included in the Blue Book

rates, shall be no greater than 15% of the hourly rental rate for actual operating hours. For leased equipment, the CMR shall provide copies of the leasing agreement for each item of equipment required for the Work. Leasing agreements shall be used to establish leased rates. For rented equipment, the CMR shall provide copies of the actual invoices paid to a third party for each item of equipment required for the Work. Operating expenses for leased and rented equipment are assumed to be included in the rental rates and no additional claim can be made for such costs. No payment will be made for spare parts, repairs or repair down time. All rates and costs shall be reasonable and necessarily incurred for the Project, as determined by the Owner in its sole discretion.

5. Costs incurred for materials, supplies, equipment, and temporary facilities used, but not consumed, in the performance of the Work, including costs of transportation, installation, dismantling and removal, such as purchase or rental of Jobsite trailers, furniture, fixtures, office equipment, fencing, hoisting, temporary Work, temporary toilets, temporary storage, trash removal and dumpsters, mowing, site access items and services, project signage and Jobsite security items and services. The CMR shall maintain a detailed log of all such materials, supplies, equipment and temporary facilities that are purchased under this provision that exceed \$1000 and, as a condition of Substantial Completion for the Project, comply with one of the following Owner's directives: (1) compensate the Owner for an agreed upon salvage value (as a deduct from the CMR's Contingency, if possible) and remove the property before Final Completion, (2) transfer title to the Owner, if applicable, and perform any action required by the Owner necessary for the Owner to retain the property or (3) administratively transfer the property to a different project, via any form requested by the Owner. All costs shall be reasonable and necessarily incurred for the Project, as determined by the Owner in its sole discretion.
6. Costs incurred due to an emergency affecting the safety of persons and property, or to prevent same, to the extent they are reasonable and fully documented and supported to the satisfaction of the Owner.
7. Costs for Jobsite utilities, temporary water and power costs, costs incurred for stormwater management and implementation of approved safety plans.
8. Costs necessarily incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.
9. Specifically identified Direct Costs of the Work items (whether as actual costs or negotiated amounts) when identified in an approved GMP Schedule of Values.
10. Costs of all permits and costs necessarily incurred in connection with obtaining any permit, test or inspection, including any required overtime.
11. CMR performance and payment bond costs at the percentage rate specified in the CMR's Price Proposal attached as **Exhibit B**. The bond rate may be converted to a lump sum for each GMP, based upon the total Cost of Work and General Conditions for the GMP. If the bond rate is billed as a lump sum, the final GMP Amendment will reconcile the lump sum bond cost using the percentage rate for the final Cost of Work and General Conditions

value. For the purpose of this calculation, the costs of insurance and bonds are not considered to be General Conditions costs.

12. Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.
13. Costs of document reproductions and delivery charges.
14. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

8.2 Cost Not to be Reimbursed. The Owner will not pay for any expenses or costs of any kind that are not specifically and expressly described in Articles 7, 8 and 9, including, but not limited to:

1. Any salaries and other compensation for the CMR's personnel, such as overtime of salaried personnel, unless the compensation is expressly identified in Article 7 or an executed GMP
2. Any expenses related to the CMR's principal and branch offices,
3. Any capital expenses, such as the interest on capital employed for the Work,
4. Any costs due to the fault or negligence of the CMR, its subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied and repairing damage or replacing property not forming part of the Work,
5. Late payment penalties or fees, if incurred due to the fault or negligence of the CMR or its subcontractor,
6. Payment and performance bond costs for Preconstruction Services and payment and performance bond costs that exceed the rate set forth in the Price Proposal attached as **Exhibit B**,
7. Any labor burden costs that would cause the burden rate set forth in Article 7 to be exceeded; for example, none of the following labor burden items are separately reimbursable: payroll taxes, medical, vision and dental insurance, workers' compensation insurance, pension, stock and retirement plans, any adjustments to the base compensation, bonus, profit-sharing, incentive or discretionary pay, paid holidays, sick pay and vacation pay, and any other expenses for employee benefits, however described,
8. Any cost that is not necessary for the Work (such as items where Owner pre-approval was not obtained) or would cause a GMP, as adjusted by GMP Amendments, if any, to be exceeded, and
9. All claims for compensation or damages that are rendered non-compensable by Article 15.3, including expenses for mediation and dispute resolution.

8.3 Discounts and Penalties. All discounts for prompt payment shall accrue to the Owner to the extent the cost is paid directly by the Owner or from a fund made available by the

Owner to the CMR for such payments. To the extent the cost is paid with funds of the CMR, all cash discounts shall accrue to the CMR. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Direct Cost of the Work. All penalties and interest incurred due to fault of the CMR or its subcontractors for late payment will be paid by the CMR and will not be reimbursable as a Direct Cost of the Work.

## **ARTICLE 9 CMR FEE**

### **9.1 CMR's Fee**

The CMR's Fee shall be the fixed percentage that was proposed in the CMR's Price Proposal attached hereto as Exhibit B. For each GMP, the Fee will be calculated by multiplying the Fee percentage by the actual costs incurred for Direct Cost of the Work and General Conditions, except that Fee will not be paid on costs for insurance and CMR bond costs. The Fee is payable upon satisfactory performance of the Work identified in a properly submitted Application for Payment. The CMR agrees that the Fee is full compensation for all of the CMR's general and administrative (G&A) costs, the CMR's profit, all home office, branch office and project office overhead, all expenses for items that are used by the CMR's staff, all non-reimbursable expenses and all costs not expressly identified in Articles 7 and 8, such as all labor and non-labor overhead, travel, relocation and lodging expenses. The Fee will be fixed for the duration of the Project.

## **ARTICLE 10 CHANGES IN THE WORK (CONTINGENCY REQUESTS, CONTRACT MODIFICATIONS), DELAY AND FORCE MAJEURE EVENTS**

10.1 Contract Modifications. The Owner, without invalidating this Agreement, may issue a Contract Modification that orders changes in the Work or the Agreement, including changes to a GMP or the Contract Documents. Contract Modifications may be issued by the Owner on its own initiative or in response to CR made by the CMR. During the negotiation of any Contract Modification, the CMR shall continue with the Work in accordance with the Contract Documents in a diligent manner and without delay, except for the scope of the proposed Contract Modification, unless a Construction Change Directive (CCD) is issued.

10.2 Request for Contingency, Time Extension or Contract Modification. The CMR shall submit a Contingency or Time Extension Request (CR) within 10 business days of when the CMR first became aware or should have become aware through the exercise of reasonable due diligence expected of a skilled CMR, of the occurrence of an event giving rise to a request for additional time or costs. Notwithstanding this deadline, the CMR shall comply with Article 10.9 for Unforeseen Conditions, and comply with Article 10.14 for Force Majeure events, and diligently prepare and submit all CRs to avoid or mitigate impacts to the schedule. To request a Contract Modification or approval of a Subcontract Change Order, the CMR shall submit to the OAR, or designee, a complete CR (printed and electronically) that includes a statement detailing the justification for entitlement, the

estimated impacts, if any, to the Baseline Schedule(s) and a cost proposal that complies with Article 10.3. Before submitting a CR, the CMR shall ensure it fully complies with the contract requirements, including but not limited to, Articles 4, 8 and 10, and shall cooperate with the OAR to obtain revised plans, sketches, specifications or other documents detailing the scope of Work from the Consultant (as required), evaluate the proposed scope of Work, proposed schedule, the reasonableness of the prices quoted by the subcontractors, conduct preliminary negotiations (as necessary) with the subcontractors and develop proposed subcontract modifications to incorporate the changes or extra Work into the subcontracts. Upon approval by the OAR, the OAR will submit the complete package to the Owner for review. The Owner shall have the option to reject proposed Contract Modifications and subcontract change orders, in which case the Owner shall coordinate any necessary revision of the Contract Documents. Upon approval by the Owner and execution by the applicable parties, Contract Modifications shall become a part of the Contract Documents, and the CMR shall promptly cause the performance of the Work so changed to proceed. Any Work performed under a proposed subcontract change or Contract Modification issued without prior Owner written approval shall be subject to removal and replacement at the CMR's cost, should Owner subsequently object thereto. Fully approved and executed Contract Modifications shall constitute final settlement and a waiver of all claims arising from or related to all items covered therein, subject to performance by CMR and payment by Owner pursuant to the terms of this Agreement. The CMR shall have no authority to authorize changes in the Contract Documents of any kind or to modify any deadlines for completion of Work specified in the Contract Documents.

10.3 Amount of Contract Modification. The increase or decrease to a GMP, or within a GMP, that results from a Contract Modification shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum that includes (i) self-performed and first-tier subcontractor costs in compliance with the provisions of Articles 4, 7 and 8 (or other negotiated rates that are independently verified) and/or (ii) other costs that are properly itemized and supported by sufficient substantiating data to permit evaluation by the OAR, Consultant and Owner;
2. by mutual acceptance of a lump sum resulting from settlement of a claim submitted in accordance with Article 15;
3. by unit prices stated in a GMP or subsequently agreed upon;
4. by time and materials cost (plus mark-up allowed by Article 4); or
5. by the Force Account procedures of Paragraph 10.5.

10.4 Construction Change Directive. If none of the methods set forth in Paragraph 10.3 is agreed upon, the Owner may issue a Construction Change Directive (CCD) to the CMR and the CMR shall promptly proceed with the Work involved and shall comply with the Force Account procedures set forth in Paragraph 10.5, except that the CMR shall not perform any Work whose cost exceeds the Owner's estimate for the Work, without prior written approval by the Owner.

10.5 Force Account Procedures.



10.5.1 Force Account Work shall only include the same costs as those allowed by Article 8 and shall be documented and verified jointly by the CMR and OAR. The CMR bears the responsibility for obtaining daily approval of all allowable Force Account charges described below. The CMR shall not be paid for claims arising from unapproved charges. The CMR shall provide documentation requested by the OAR including, but not limited to:

1. Time sheets which shall be approved and signed daily by the OAR (or authorized site representative, designated for this purpose) for the actual hours spent for manpower and equipment listed.
2. Labor cost accounting records that evidence the net direct cost of the labor and foremen while directly performing the Force Account Work activity, including labor burden in accordance with Article 8, but excluding any costs associated with any of the superintendents, project engineers, or project managers. If billable rates have been approved for the applicable position, additional documentation of labor burden will not be required.
3. Equipment cost accounting records that evidence the cost of rented equipment or the CMR's equipment.
4. Material cost accounting records that evidence the net costs of materials for the Force Account Work activity.
5. General Conditions Costs, if directly impacted by the Force Account Work.

10.5.2 Within seven (7) days of the completion of the Force Account Work, the CMR shall compile and submit to the OAR a proposed Contract Modification that contains the backup documentation for each element of the Force Account Work. When properly included in an Application for Payment, the CMR's Fee will be paid on the Force Account Work.

10.5.3 The CMR specifically agrees that no claims shall be asserted against the Owner for such Force Account Work. If the Project includes multiple changes that are to be paid by Force Account, the Work shall be documented and processed separately.

10.5.4 Upon verification of the amounts set forth in the proposed Contract Modification, the OAR will prepare a Contract Modification for the Force Account Work and submit to the Owner for approval.

10.6 Itemized Accounting. For all Contract Modifications and Subcontract Change Orders, the CMR shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase or decrease in the Direct Cost of the Work as outlined in Article 8. By submitting a Contingency Request or a proposed subcontract modification, the CMR represents that all costs are and shall be accurate, complete and current at the time of submission. In addition to any other rights and remedies provided to the Owner by the Agreement or Contract Documents, the Owner shall have the right to adjust the Application for Payment to (1) exclude any amounts which the Owner determines were improperly paid and (2) recover interest on all excess amounts paid to the CMR at the legal rate of interest allowable under the Code of Virginia.

The CMR shall be required to include these provisions in all subcontracts entered into under this Agreement.

- 10.7 Unit Prices. If unit prices are stated in a GMP or subsequently agreed upon, and if the quantities originally contemplated are changed in a proposed Contract Modification by an amount not greater than 25%, the unit prices shall remain in effect. If unit prices are stated in a GMP or subsequently agreed upon, and if the quantities originally contemplated are changed in a proposed Contract Modification by an amount greater than 25%, the unit prices may be equitably adjusted.
- 10.8 Owner Changes to the Work/Owner Caused Delay. Increases in the cost to the CMR in performing the Work due to a change in the Project attributable to the Owner may result in an increase to a GMP, in the sole discretion of the Owner. The Owner may reduce the scope of a GMP at any time. Delays caused by the Owner, OAR, Consultant or other separate contractor employed by the Owner may entitle CMR to compensation for reasonable actual costs incurred, subject to compliance with Articles 10 and 15.
- 10.9 Unforeseen Conditions. Unforeseen Conditions are conditions that are encountered in the performance of the Work for the Project that are on or below the surface of the ground or in an existing structure that differ materially from those identified in any Owner-furnished information that was not reasonably discoverable by the CMR. If CMR believes that Unforeseen Conditions have been encountered, the CMR shall give written notice to the OAR promptly before conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. The notice shall include a written description of the Unforeseen Condition and the CMR's proposed method to resolve the condition. If the Owner concurs that Unforeseen Conditions have been encountered and concurs with the proposed resolution, and if the CMR requests additional compensation or time, the CMR shall submit a fully-substantiated CR that complies with all other requirements of Article 10, within ten (10) business days of notice of the Owner's concurrence. Otherwise, the CMR shall proceed at the direction of the OAR and may submit a claim in accordance with Article 15. For the purpose of this paragraph, Owner-furnished information does not include any site surveys, geotechnical reports, soil borings or any other site investigation information that is or should have been procured by the CMR.
- 10.10 Requests For Additional Time. All requests for additional time shall be made by submitting a CR in accordance with Article 10.2. All requests for additional time shall be substantiated by supporting documentation to satisfy the Owner that there are impacts to the critical path of the Project Schedule included in the applicable GMP. In the event that additional time is granted, and the Owner determines that it is necessary or desirable to accelerate the Work in order avoid an extension of any completion date or milestone, the Owner shall be entitled to selectively accelerate the schedule by choosing which Work items to accelerate in order to mitigate cost. In making the decision to selectively accelerate a particular Work item, the Owner shall be entitled to rely on the schedule logic of the Project Schedule on which the accelerated Work is found. If Owner requires acceleration of the schedule as a result of an excusable delay, the CMR must timely submit a properly-prepared CR to request additional compensation. All requests for additional time shall comply with the following:

1. The request for additional time, subject to the Owner's review and approval, must be supported by a detailed schedule analysis of the approved CPM, using the methodology required by the scheduling Specifications attached hereto.
  2. If the analysis shows that a delay has occurred to the Substantial or Final Completion Dates due solely to the delay event, the CMR must identify the specific critical activities that are affected and the number of calendar days of each delay.
  3. Excusable delays are delays in the performance of the Work that the CMR has proven to impact the critical path of the Project that are directly caused by (i) a Force Majeure event as determined in accordance with this Agreement, (ii) acts or omissions of the Owner its agents or employees or any separate independent Contract of the Owner, (iii) unusually severe weather as described in the scheduling Specifications attached hereto or (iv) Unforeseen Conditions as defined herein. Each request for additional time shall include a narrative, identifying the delays that the CMR believes are excusable and explain the reasons why. All other delays identified in the analysis will be considered non-excusable and shall be the responsibility of the CMR. The narrative must also identify any delays that the CMR believes are concurrent.
- 10.11 Minor Changes In The Work. The OAR and the Owner may order minor changes in the Work not involving an adjustment to a GMP or an extension of the Project Substantial Completion Date and not inconsistent with the intent of the Drawings and Specifications for the Project. Such changes shall be effected by written order (FCO). Documentation of changes shall be determined by the Project Team, included in the Project Manual and displayed monthly in the PMIS.
- 10.12 Emergencies. In any emergency affecting the safety of persons or property, the CMR shall act at its reasonable discretion, to prevent threatened damage, injury or loss. Any increase in a Guaranteed Maximum Price or extension of time claimed by the CMR on account of emergency Work shall be determined as provided in this Article.
- 10.13 Hazardous Waste Removal. The CMR shall cause the removal, encapsulation, transportation and disposal of any hazardous material as may be required in connection with the Work. Hazardous material brought by the CMR or the subcontractors shall remain their responsibility for proper disposal.
- 10.14 Force Majeure.
1. A "Force Majeure" event is an event that (i) in fact causes a critical path schedule delay in the performance of a Party's obligations under the Contract Documents, and (ii) is beyond the reasonable control of the Party incurring the delay, and (iii) is not due, in whole or in part, to any error, omission, negligence, or intentional act of such Party, and (iv) could not have reasonably been foreseen and prepared for by such Party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics other than the COVID-19 pandemic

as described below, sabotage, explosions, embargo restrictions, quarantine restrictions not in place at the time this Agreement is executed, acts or failures to act on the part of governmental authorities including changes in the law and court orders, industry strikes or lockouts, floods, hurricanes, tornadoes, or earthquakes. Force Majeure shall not include technological impossibility, failure of equipment, labor or materials supplied by CMR, delays related to the COVID-19 pandemic (except in the case of a declaration of a new national emergency by the federal government), failure to maintain the Work in good repair during the Agreement, receipt of and incorporation of defective materials into the Work, increases in the cost of labor or materials, changes in the general economic or market conditions, failure of suppliers to deliver equipment and materials except where such failure is itself the result of a Force Majeure event, failure of CMR to secure the required permits for prosecution of the Work, any strikes, boycotts, lockouts or like obstructive actions by labor organizations that are caused by or alleged to have been caused by the CMR, its subcontractors or other laborers or materialmen performing the Work on the Project, or other abnormal inclement weather conditions.

2. If CMR's performance of its obligations is prevented or delayed by an event believed by CMR to be Force Majeure, CMR shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but no later than seven (7) days thereafter, give to Owner written Notice (i) of the occurrence of the delay, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Work, (iv) of the anticipated period of the delay, and (v) of what course of action CMR plans to take in order to mitigate the detrimental effects of the event. CMR's timely delivery to Owner of the Notice of the occurrence of a Force Majeure event is a condition precedent to allowance of an extension of time under this Paragraph 10.14; however, receipt of such Notice by Owner shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure. The burden of proof of the occurrence of a Force Majeure event shall be on CMR. Failure to give such Notice promptly and within such time limit may be deemed sufficient reason for denial by Owner of any extension of time.
3. If in the opinion of Owner, the event was a Force Majeure event, CMR shall be entitled to such extension of time for completing the Project as, in the opinion of Owner, is reasonable and equitable. In determining whether any such extension shall be granted and in determining the length of such extension, Owner may take into consideration any omissions or alterations in the Work or equipment, materials and apparatus required by the Contract Documents whereby, in its opinion, the time necessary for completion has been reduced.
4. The suspension of CMR's performance due to a Force Majeure event shall be of no greater scope and no longer duration than is required. CMR shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and

otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event.

5. CMR's obligations that arose before the occurrence of a Force Majeure event causing the suspension of performance shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
6. Any extension of time based on an acknowledged Force Majeure event will depend upon the extent to which the delay affects the critical path of the Project Schedule and will only extend the scheduled dates for the items of the Work so delayed. Scheduled dates for other portions of the Work not so delayed will remain unchanged. Delays due to Force Majeure events which do not affect the Critical Path of the Project Schedule will not entitle CMR to an extension of the Substantial Completion Date. CMR's sole remedy for the occurrence of a Force Majeure event shall be an extension of time for the activities on the Project Schedule that are directly delayed by the Force Majeure event, and no damages, costs or other compensation or reimbursement will be recoverable in connection with any Force Majeure event.

#### 10.15 Damages For Delay.

1. Excusable Non-Compensable Delays: If the CMR is delayed at any time in the progress of the Work by any act or omission of the Owner, its agents or employees or any separate independent contractor of the Owner, and the act or omission is the result of or is necessitated by causes outside the Owner's control; or if the CMR is delayed by a Force Majeure event, or other causes outside the Owner's or CMR's control, the CMR shall proceed in accordance with Article 10 of this Agreement.
2. Excusable Compensable Delays: If the Critical Path of the Project is unreasonably delayed at any time in the progress of the Work by any act or omission of the Owner, its agents or employees, due to causes within their control, or delayed by the Owner's separate, independent contractors, when such delay results from causes within the Owner's control, and the CMR intends to seek additional compensation for damages, if any, caused by the delay, the CMR shall proceed in accordance with Article 10 of this Agreement. The CMR shall only be entitled to additional compensation if the delay was unreasonable and was caused solely by acts or omissions of the Owner, its agents or employees, due to causes within their control, or was caused by the Owner's separate, independent contractors, when such delay resulted solely from causes within the Owner's control.
3. Non-Excusable Non-Compensable Delays: The CMR shall not be entitled to an extension of the Time for Completion or Substantial Completion Date or to any additional compensation for delays caused by acts or omissions of the CMR due to causes within its control, including, but not limited to, delays resulting from defective Work including workmanship and/or materials, from rejected Work which must be corrected before

dependent Work can proceed, from defective Work or rejected Work for which corrective action must be determined before like Work can proceed, or from incomplete, incorrect or unacceptable Submittals or samples.

4. No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule, and any float has been consumed. No extension of time or additional compensation shall be given for a delay if the CMR failed to give notice in the manner and within the time prescribed in Articles 10 and 15 of this Agreement. Failure to give notice or failure to present a claim for extension of time and/or additional compensation within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.

5. Requests for compensation for delays must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path of the approved CPM schedule, and that the additional costs incurred by the CMR are directly attributable to the delay in the Work claimed. If there is an extension in the Time for Completion or the Substantial Completion Date and if the CMR is entitled to compensation for such delay, and where there is no change in the Work, an itemized accounting of the following direct Jobsite overhead expenses will be considered as allowable costs to be used in determining the compensation due the CMR:

Site superintendent prorata salary, temporary Jobsite office expense, temporary Jobsite facilities, and temporary Jobsite utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate the CMR for home office and other direct or indirect overhead expenses.

6. If the CMR submits a claim for delay damages pursuant to Article 15 or Article 10, the CMR shall be liable to the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the CMR's total delay claim which is determined through litigation to be false or to have no basis in law or in fact.

7. If the Owner denies CMR's claim for delay damages pursuant to Article 15 or Article 10, the Owner shall be liable to the CMR for a percentage of all costs incurred by the CMR in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the CMR's total delay claim for which the Owner's denial is determined through litigation to have been made in bad faith.

8. Any change in the Time for Completion or Substantial Completion Date shall be accomplished only by issuance of a Contract Modification.

## **ARTICLE 11 PAYMENTS TO THE CMR**

### **11.1 Payment Applications**

- 11.1.1 On or before the 25th of the month and projected out through the end of the month, the CMR shall submit to the OAR two (2) original itemized Applications for Payment for Work completed in accordance with an Addendum, and the applicable schedule of values or unit price schedule. Each Application for Payment shall be in the format approved by the Owner, notarized, supported by the applicable cost reports required under Paragraph 2.2, with other supporting documentation as may be reasonably requested by the Owner. Applications for Payment that are received after the 25<sup>th</sup> of each month may be considered for payment in accordance with this Article or may be deferred until the following month's Application for Payment.
- 11.1.2 Separate payment applications shall be submitted for Preconstruction Services and each GMP.
- 11.1.3 Each Application for Payment shall contain Certifications stating the following (or as otherwise approved by the Owner): "The CMR hereby certifies that, except as indicated on the attached release forms, there are no claims of CMR, its subcontractors or suppliers as of the date of this Application for Payment that have not been completely resolved, that the CMR has no knowledge of any unresolved claims by subcontractors or suppliers, that all subcontractors and suppliers have been paid to date from funds received for previous Applications for Payment, that there is no known basis for the filing of any claim and CMR, upon receipt of funds due in this Application for Payment, hereby releases the Owner from any claims arising from the Work, except for retainage and claims properly submitted and identified in the release submitted with the Application for Payment. The CMR further certifies that the amounts contained in the Application for Payment are necessarily incurred for the Project, fair and reasonable, and not duplicative of other cost items paid under the Agreement and have been verified and are correct."
- 11.1.4 Each Application for Progress Payment shall include a partial release, executed by the CMR, and shall include releases and waivers of bond rights executed by the applicable subcontractors, all in a form acceptable to the Owner, and other documentation that may be required to evidence the status of payments.
- 11.1.5 Applications for Payment may not include requests for payment of amounts the CMR does not intend to pay to a subcontractor or material supplier because of a dispute or other reason, unless the CMR is completing the Work of a defaulted subcontractor or supplier through its own forces or third parties and provides written notice to Owner of the circumstances.
- 11.1.6 The failure to comply with the requirements of this Article may result in the withholding of approval of the Application for Payment until compliance is achieved.
- 11.1.7 Within twenty (20) calendar days after the OAR's receipt of the Application for Payment, the Owner and OAR shall either (1) approve the Application for Payment by signing the Application in the appropriate places including, obtaining the signature of the Consultant in the appropriate place or (2) the OAR shall notify the

CMR in writing of reasons for withholding approval in whole or in part and the action necessary to make the Application acceptable. Issues that are cured to the satisfaction of the OAR within 48 hours will be processed for payment within the original billing cycle.

- 11.1.8 The issuance of the Certificate for Payment by the Consultant and the OAR will constitute a representation by them to the Owner, based upon their observations at the Jobsite and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The CMR shall not rely upon these representations as the Owner's acceptance of the Work since they are made for payment purposes only and are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents, correctable prior to completion and to specific qualifications expressed by the Consultant or the OAR. The issuance of the Certificate for Payment is not a representation that the Consultant or the OAR have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work (2) reviewed construction means, methods, techniques, sequences or procedures (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the CMR's right to payment or (4) made examination to ascertain how or for what purpose the CMR has used money previously paid. The CMR may not rely upon the Certificate of Payment as approval and acceptance of the Work reflected thereon.
- 11.1.9 The OAR and/or Consultant may withhold approval, in whole or in part, to the extent reasonably necessary to protect the Owner, if it cannot certify that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. In addition, notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment, if, and for so long as a good faith dispute exists, which may include the CMR's failure to perform any of its obligations hereunder, the CMR's default under any of the Contract Documents or there is reasonable evidence indicating that the Work will not be completed within the Project completion date(s), as may be adjusted by a GMP Amendment, and the unpaid balance would be insufficient to cover the anticipated Liquidated Damages; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the CMR. In addition, if the Owner or OAR subsequently discovers that an Application for Payment was improperly paid, the Owner or OAR may withhold payment on any future Applications for Payment, in whole or in part, to the extent necessary to recover the funds improperly paid. If the Owner determines that the reasons for withholding payment no longer exist, the Owner will so notify the CMR and will make payment for the amount of the holdback within ten (10) business days.
- 11.1.10 Upon notification that an Application for Payment is not approved, the CMR and the OAR shall conduct discussions to determine whether a revised Application for



Payment can be agreed upon. If no agreement is reached within ten (10) business days after notification, the OAR or Owner will adjust the original Application for Payment to delete the disputed amounts and will then approve payment for the undisputed amount and send a copy of the adjusted Application for Payment to the CMR. If an agreement can be reached on the disputed portions of the Application within ten (10) days, the CMR will submit a revised and signed Application for Payment for the agreed amount, if any, to the OAR and Owner for approval. Payment will be made within ten (10) business days after the Owner's approval of the revised Application for Payment.

11.1.11 The Owner's signature on the Application for Payment does not constitute approval and acceptance of the Work.

11.1.12 At all times during the processing of an Application for Payment, including resolution of any related disputes, the CMR shall continue to expeditiously prosecute the Work.

11.1.13 Concurrent with the submission of an Application for Payment, the CMR shall submit an updated progress schedule, prepared in accordance with the Contract Documents, and make available for review and inspection by the Owner and OAR an updated version of the As-built Drawings, prepared in accordance with the Contract Documents, reflecting all items of Work for which the CMR is seeking payment. Failure to have the updated schedule or As-built Drawings available for review or to reflect items of Work on the updated As-built Drawings for which payment is sought may result in the Owner's withholding payment or partial payment until such time as properly updated As-built Drawings are prepared.

11.2 Progress Payments. The Owner shall make payment to the CMR of the amount specified in the approved Application for Payment within twenty-five (25) business days from the date that a complete Application for Payment is stamped as received by the OAR. If the payment has not been made within that time, CMR may deliver an overdue notice to the Owner. Within four (4) business days after receipt of the overdue notice, either payment shall be made or the OAR shall notify the CMR in writing that the approval of the Application for Payment has been withdrawn and the reasons therefore. Payment by the Owner shall not constitute approval or acceptance of any item of cost in the Application for Payment. No partial payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the CMR of any of its obligations hereunder.

11.2.1 Interest shall accrue on all amounts owed by the Owner to the CMR which remain unpaid seven (7) days following the date payment was due. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled The Wall Street Journal on the weekday following each such Weekly Auction. During the period of time when the amounts due to the CMR remain unpaid following the seventh (7) day after the date such payment was due, the interest accruing shall fluctuate on a weekly basis and shall be that established by the immediately prior Weekly Auction. It shall be the responsibility of the CMR to gather and

substantiate the applicable weekly interest rates to the satisfaction of the Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest charged pursuant to § 58.1-1812, Va. Code. No interest shall accrue on retainage or when payment is delayed because of disagreement between the Owner and the CMR regarding the quantity, quality or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any Application for Payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Agreement. These same provisions relating to payment of interest to the CMR shall apply also to the computation and accrual of interest on any amounts due from the CMR to the Owner for deductive change orders and to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

### 11.3 Stored Materials.

11.3.1 At the Owner's sole discretion, payment may be made for the direct actual cost of materials and equipment delivered and suitably stored at a location approved by Owner for subsequent incorporation in the Work. No costs for fees, overhead or profit will be paid until the materials are actually incorporated into the Work. In order for stored materials to qualify for early payment hereunder, the value of the materials must exceed \$10,000 and not be scheduled to be incorporated into the Work within sixty (60) days, unless otherwise allowed by Owner. Payment for such stored items shall not relieve the CMR of its obligations to furnish and install the items in accordance with the Contract Documents. Payment for such stored items shall be conditioned upon the following information and documentation being obtained by CMR and provided to Owner:

1. Inventory schedule detailing the specific type of stored materials for which payment is requested, including but not limited to, quantities, types and sizes;
2. Invoices evidencing the costs of such stored materials, attached as back-up documentation to the Application for Payment under which payment for stored materials is sought;
3. A bill of sale, invoice or other documentation evidencing that the Owner has received the stored items free and clear of all claims and liens. This evidence shall be submitted to the Owner in the next Application for Payment. Failure to comply with this requirement may result in the Owner withholding payment until the evidence is furnished;
4. A consent of surety for the Owner's payment for such stored items;

5. A certificate of insurance evidencing that stored materials not located on the Owner's property, are insured for the full replacement value of the stored materials for which payment is requested. Failure of the CMR to obtain and maintain insurance coverages required herein shall give rise to a breach of this Agreement, thereby allowing Owner all recourse permitted by law, including recovery under the payment and performance bonds issued for the Project.

11.3.2 The CMR agrees to separately mark and identify the stored materials with the Project name and name of the CMR. All such stored materials shall be made available for Owner's periodic inspections; The CMR shall be responsible for all loss or damage to such stored materials arising from theft, malicious mischief or vandalism until Substantial Completion is achieved. CMR assumes all risk of transit with respect to such stored materials.

11.3.3 If so requested by the Owner, the CMR shall submit, within 30 days after the date of commencement of the Work and thereafter as the Owner requires, material delivery schedules for each category or subcontract for which Application for Payment for stored materials will be made, which schedules shall include items, quantities, value or unit prices with extensions and the month in which Application for Payment with respect thereto is expected to occur. Schedules shall be updated on a monthly basis and submitted as an attachment to the Application for Payment. The Owner has no obligation to pay the CMR if the updated monthly schedule is not provided.

11.3.4 The CMR warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment on such Application for Payment by the Owner to the CMR. The CMR warrants that title to all Work that is not covered by an Application for Payment (such as repair work) will pass to the Owner upon the Owner's acceptance of the Work. The CMR shall be responsible for adequately securing and protecting from weather damage all materials and equipment stored on the Owner's property. The CMR further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the CMR, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### 11.4 Retainage.

11.4.1 The Owner may withhold up to five percent (5%) of the payment certified as due to the CMR as retainage until the Final Completion Date and acceptance of all Work covered by this Agreement, unless otherwise provided by any applicable law, regulation or program of the federal government. Such retainage shall be held to assure faithful performance of the Agreement and may also be used as a fund to deduct amounts due to or claimed by the Owner, including but not limited to,

payment to the Owner of all moneys due for deductive change orders, credits, uncorrected defective Work, interest, damages, and the like (§ 2.2-4333, Va. Code).

- 11.4.2 For any subcontracts that provide for progress payments, the Construction Manager shall only withhold up to 5% of the payment due to the subcontractor as retainage.
- 11.4.3 Notwithstanding anything in the Contract Documents to the contrary, the Owner may, but is not obligated to, reduce the retainage being withheld or release any portion of retainage before it is required to be paid. Any exercise of this right shall not waive the Owner's right to withhold retainage from subsequent payments or any other right or remedy of the Owner. The Owner may, in its sole discretion, agree on an item by item basis to release the retainage on Work items that are fully 100% complete, which have been accepted by the Owner as being tested and complete and on which no further action or Work will be required.
- 11.4.4 If the Owner agrees to reduce the retainage being withheld or release any portion of retainage before it is required to be paid, the CMR may submit a separate Application for Payment to the OAR in accordance with this Article. For any release of retainage, the CMR must include with the Application for Payment the written consent of the Surety to the reduction in retainage and a partial release in the form required by the Owner.
- 11.4.5 The payment of retainage shall have no effect on the CMR's warranty or any other contractual obligation. CMR shall remain liable to Owner for all items of Work in accordance with the Contract Documents notwithstanding any payment of CMR retainage.

#### 11.5 Subcontractor Payments.

Pursuant to the § 2.2-4352 and 2.2-4354, Va. Code, the CMR is obligated to:

- 11.5.1 Within seven (7) days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor or Supplier under this Contract:
  - i. Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract, less applicable retainage; or
  - ii. Notify the Owner and the Subcontractor or Supplier, in writing, of its intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- 11.5.2 Pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor or materials furnished by the Supplier under this contract, except for amounts withheld as

allowed under subsection 11.5.1(ii). Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.

- 11.5.3 In the event Contractor has not received payment from the Owner, it shall be liable to any Subcontractor for the entire amount owed, less retainage, to such Subcontractor and to pay such Subcontractor within 60 days of the receipt of an invoice following satisfactory completion of the Work for which the Subcontractor has invoiced. Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of the contract. However, in the event that the Contractor withholds all or a part of the amount invoiced by the Subcontractor under the terms of the contract, the contractor shall notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor's receiving payment for amounts owed to that contractor.
- 11.5.4 Include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements as stated in 11.5.1 through 11.5.3 with respect to each lower tier subcontractor and supplier. Each Subcontractor shall include with its invoice to, or request for payment from, the Contractor, a certification that that Subcontractor has paid each of its suppliers and lower tier subcontractors their proportionate share of previous payments received from the Contractor attributable to the Work performed or the materials furnished by it under this Contract.
- 11.5.5 The Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to Section 11.5.2 is not an obligation of the Owner. A modification to this Contract shall not be made for the purpose of providing reimbursement for such interest charge. A Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.
- 11.5.6 If required by the Owner, within fifteen (15) business days of receipt of payment from the Owner, the CMR shall send to the Owner copies of checks paid for all items of the CMR's costs listed in the Application for Payment that were not paid prior to the date on which the Application for Payment was submitted.
- 11.5.7 If the CMR fails to pay a subcontractor or supplier as required, then the Owner may, at its option, following a request from the unpaid subcontractor, pay such subcontractor or supplier the applicable sums paid the CMR on account of the subcontractor's or supplier's Work or materials, and deduct such sums from any monies due the CMR in the future unless the CMR can furnish information satisfactory to the Owner that the payment should not be made and CMR is actively

taking steps to resolve a dispute, if applicable. The Owner's options in this paragraph are in addition to any other rights set forth in this Agreement.

11.5.8 The Owner, OARs and Consultant shall not have any obligation to pay or to assure the payment of money to a subcontractor for Work on the Project. The Owner may, however, demand affidavits or statements from subcontractors or suppliers and, at the Owner's sole discretion, pay subcontractors and suppliers by joint checks or directly for those amounts agreed by the CMR as due and owing. In such event, the CMR agrees any such payments shall be treated as a direct payment to the CMR's account.

11.5.9 CMR shall include in all subcontracts language providing that CMR and subcontractor may resolve payment disputes by alternative dispute resolution mechanisms. CMR shall promptly take the initiative to commence such resolution process if CMR has withheld a payment to a subcontractor for cause that is disputed by subcontractor. CMR shall make every effort to resolve such payment disputes with its subcontractors quickly and in a reasonable manner, so as not to delay the Work.

11.5.10 The CMR may request payment from the Owner for a reduction in subcontractor retainage prior to the scheduled release of retainage. At the time such retainage is requested, the CMR shall provide the Owner with a Subcontractor Release Form that is acceptable to the Owner, executed by each Subcontractor for which retainage payments are requested. Any early reduction of a portion of retainage shall have no effect on the CMR's warranty and other obligations that are preliminary to Substantial or Final Completion. The CMR shall remain liable to Owner for all items of Work in accordance with the Contract Documents notwithstanding any early release of the CMR's or Subcontractor's retainage. Any decisions regarding early release of retainage shall be in the sole discretion of Owner.

11.5.11 Subcontractors' and consultants' invoices and CMR's subcontractor and consultant payment records shall be provided to the Owner as actual cost documentation as a requirement for payment to the CMR.

11.6 Final Payment. Final payment will be made in accordance with the requirements of Article 5.

## **ARTICLE 12 BONDS, INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION**

12.1 Bonds. In accordance with the provisions of § 2.2-4337 Va. Code, the CMR shall provide to the Owner, on forms furnished by the Owner, a Performance Bond and a Labor and Material Payment Bond with a penal sum equal to the Cumulative Contract Value. For the purposes of all Labor and Material Payment Bonds entered into, the term "subcontractors" as used in § 2.2-4337.A.2 means any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in § 2.2-4337, Va. Code. A.2. as the "prime

contractor”), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening Subcontractors contractually positioned between it and the Contractor (prime contractor).

The bonds shall be delivered to Owner simultaneously with an executed GMP. The CMR shall not commence any construction Work in connection with the Project until a GMP has been fully-executed by the Owner and delivered to the CMR. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the CMR, subject to approval by the Owner. No payment on the Agreement shall be due and payable to the CMR until the bonds have been approved by the Owner. The power of attorney from any Surety company issuing a bond on the Project to its agent who executes the bond shall be attached to the bond.

To be acceptable as a Surety for the Performance Bond and Payment Bond, a Surety Company shall comply with the following provisions:

1. The Surety shall have a currently valid Certificate of Authority, issued by the Commonwealth of Virginia, Department of Insurance, authorizing it to write surety bonds in the Commonwealth of Virginia.
2. The Surety shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety shall be in full compliance with the provisions of the Virginia Insurance Code.
4. The Surety shall have at least an A- policyholder’s rating and a Class VII financial rating in the latest issue of Best’s Key Rating Guide.

## 12.2 Indemnity.

12.2.1 To the fullest extent permitted by law, the CMR shall indemnify, defend and hold harmless the Owner, the Owner’s Authorized Representatives, and its agents, members, officers, Commissioners and employees from and against any and all claims, obligations, liabilities, fines, damages, losses, expenses and costs, including, but not limited to, reasonable attorney’s fees (and other legal costs such as those for paralegal, investigative, legal support services and the actual costs incurred for expert witness testimony) and settlement amounts, arising out of or resulting from, or alleged to arise out of or from, CMR’s performance and/or non-performance of CMR’s work under this Agreement, including without limitation negligent acts or omissions or willful misconduct, except to the extent that the claims, obligations, liabilities, fines, damages, losses, expenses and costs are caused by the negligence or willful misconduct of the Owner or the Owner’s members, officers, agents and employees. Such liabilities shall include those arising from a violation of any federal, state or local law, regulation or ordinance by the CMR and all persons employed or utilized by the CMR in the performance of the Work and

this Agreement including but not limited to its subcontractors regardless of tier. This indemnification obligation includes any penalties or fines assessed by the Federal Aviation Administration or Transportation Security Administration as well as any other costs to the Owner, such as investigation and security training, incurred as a result of any violation of laws or regulations that govern the Project or federal security regulations, including the Airport Security Plan, by the CMR, its subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The CMR shall also indemnify and hold harmless the Owner and its Commissioners, officers, agents and employees against any assertion of claims for failure of payment, or failure to provide appropriate bonds, made by subcontractors or suppliers, and against any assertions of security interests by suppliers of goods, services or materials. CMR shall purchase insurance, as described in Section 12.3 of this Agreement, which shall include coverage for the contractual liability described herein. In any case in which CMR provides a defense to the Owner pursuant to this indemnity, the defense will be provided by attorneys reasonably acceptable to the Owner. This indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right to indemnity which would otherwise exist as to any party or person described in this Article. The indemnification provisions shall survive the expiration or termination of this Agreement.

- 12.2.2 Notwithstanding any limitation of liability terms in the Agreement, CMR hereby agrees to indemnify, defend, and hold harmless the Owner, its officers, employees, Commissioners and agents from and against any and all claims, losses, damages, costs, expenses, liabilities, assessments, judgments, administrative fines or deficiencies of any nature whatsoever, including, without limitation, reasonable attorneys' fees and other costs and expenses, suits, actions, or proceedings, which may arise out of, result from, or constitute any Security Incident or breach of Confidential Information by CMR or any subcontractor or supplier. For the purposes of this Section 12.2.2 of the Agreement, "Security Incident" shall mean any actual or reasonably suspected accidental or unlawful processing, destruction, loss, theft, alteration, misuse, interference, modification, unauthorized access to, or disclosure or acquisition of, any Confidential Information as defined in Section 16.2.
- 12.2.3 The CMR hereby acknowledges receipt of ten dollars and other good and valuable consideration for the indemnification obligations of this Agreement.
- 12.2.4 In claims against any person or entity indemnified under this Article 12 of the Agreement by an employee of the CMR, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under Article 12 of this Agreement shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the CMR or subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts.



12.2.5 If the above indemnity provisions are deemed void in whole or in part under Virginia law, then the following indemnification obligations shall apply to the extent such provisions are deemed void: CMR shall indemnify and hold harmless the Owner, their officers, Commissioners, and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CMR and persons employed or utilized by the CMR in the performance of this Agreement.

### 12.3 CMR's Insurance.

12.3.1 Description of CMR Required Insurance. CMR shall procure, maintain and keep in force, the amounts and types of insurance conforming to the minimum requirements set forth in this Agreement. For the purposes of this insurance, the term "Owner Additional Insureds" shall mean "the Owner and the members of the Owner's Board, officers, agents and employees." Except as otherwise specified in this Agreement, the insurance shall commence prior to the commencement of Work by CMR, and shall be maintained in force through Final Completion and the applicable statutes of limitation and period of repose in Virginia law.

1. Contractor Controlled Insurance Program. If a Contractor Controlled Insurance Program ("CCIP") is proposed by the CMR, it must include Workers' Compensation/Employers' Liability, Commercial General Liability, and, if possible, include Pollution Liability insurance, all of which must meet the requirements of this Article 12.3.1.

a. Except with respect to the subcontractors, or sub-subcontractors of any tier, described below as Excluded Insureds, all of CMR's subcontractors, and sub-subcontractors of any tier, shall be included as Named Insureds in the CCIP.

b. The following subcontractors, or sub-subcontractors of any tier, may be Excluded Insureds, and are not required to be included as Insureds or Named Insureds in the CCIP:

Contractors whose jobsite activities are limited to the delivery or pickup of equipment or supplies to or from the Jobsite such as materialmen, suppliers, haulers, drivers, etc.

If the Workers' Compensation/Employers' Liability, Commercial General Liability, and Pollution Liability insurance, required by this Article 12.3.1, is not provided by Contractor under a CCIP, the coverage for CMR's Subcontractors, and sub-subcontractors of any tier, shall conform to the requirements set forth in Article 12.3.8.

2. Workers' Compensation/Employers' Liability. The Workers' Compensation/Employers' Liability insurance shall conform to the requirements set forth herein and Virginia law.

- a. Except as otherwise provided herein, such insurance shall be on a form no more restrictive than, and shall cover the Named Insureds for those sources of liability which would be covered by, the latest edition of the standard Workers Compensation And Employers Liability Insurance Policy, as filed for use in the Commonwealth of Virginia by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Employers Liability Coverage Endorsement (NCCI Form), those which are required by the Commonwealth of Virginia, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable federal or state law.
- b. The policy must be endorsed to waive the insurer's right to subrogate against Owner Additional Insureds in the manner which would result from the attachment of the NCCI Waiver of Our Right to Recover from Others Endorsement (Advisory Form WC 00 03 13) with Owner Additional Insureds scheduled thereon.
- c. The policy must be endorsed to provide Owner with a minimum of 30 days' notice of cancellation, except for non-payment of premium for which a minimum of 10 days' notice shall be provided.
- d. Subject to the restrictions of coverage found in the standard Workers Compensation And Employers Liability Insurance Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers Compensation And Employers Liability Insurance Policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standard Workers Compensation And Employers Liability Insurance Policy (inclusive of any amounts provided by an umbrella or excess policy) shall be:
  - \$ 10,000,000 - Each Accident
  - \$ 10,000,000 Disease - Policy Limit
  - \$ 10,000,000 Disease - Each Employee
- e. Limitation To Designated Workplace — If a CCIP is utilized, the coverage should apply only to work conducted at or from the Jobsite, including any staging, storage, parking or similar area(s) controlled by the CMR at, or adjacent to, the Jobsite and dedicated to the Work.

3. Commercial General Liability. The Commercial General Liability insurance shall conform to the requirements set forth herein:
- a. Except as otherwise provided herein, such insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would be covered by, Coverage A. Bodily Injury and Property Damage Liability, and Coverage B. Personal and Advertising Injury Liability, in the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the Commonwealth of Virginia by the Insurance Services Office (ISO) without any restrictive endorsements other than those which are required by the Commonwealth of Virginia, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements) and those described in Article 12.3.1.3(c). In no event, shall the policy include any exclusion which limits the coverage for a Named Insured with respect to the liability of a Named Insured resulting from its subcontractors or sub-subcontractors.
  - b. Umbrella or Excess Liability insurance shall provide at least excess limits over Commercial General Liability, Automobile Liability, and Employer's Liability policies. Such insurance shall be on an occurrence basis in excess of the underlying insurance described in this Article and shall be at least as broad as each and every one of the underlying policies and shall schedule Commercial General Liability, Automobile Liability, and Employer's Liability policies and shall be written in accordance and shall be at least as broad as the underlying policies. Endorsements shall include Pay on Behalf of Wording; Concurrency of Effective Dates with Primary; Aggregates: Follow Form Primary; and Drop Down Feature.
  - c. The policy must be endorsed to provide Owner with a minimum of 30 days' notice of cancellation, except for non-payment of premium for which a minimum of 10 days' notice shall be provided.
  - d. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, contractual liability, construction defects or consequential losses or damages. Unacceptable exclusions include exclusions for damage to Work performed by Subcontractors on your behalf (e.g. CG 22 94 or CG 22 95); for contractual liability (e.g. CG 21 39); and for known loss. To the extent the policy includes a professional liability exclusion, that risk shall be covered by the CMR's professional liability policy.

To the extent the policy includes a pollution liability exclusion, that risk shall be covered by the CMR's pollution liability policy.

- e. The coverage may include restrictive endorsements which exclude or limit coverage for liability arising out of:

Mold, fungus, or bacteria  
Silica, asbestos or lead

- f. **Limitation To Jobsite** — If a CCIP is utilized, the coverage should apply to liability arising out of Work conducted at or from the Jobsite including any staging, storage, parking or similar area(s) controlled by the CMR at, or adjacent to, the Jobsite, and dedicated to the Work.

- g. **Minimum Limits:**

**Total Limits**

The minimum total limits (including the project specific limits) to be maintained by CMR (**inclusive of any amounts provided by an umbrella or excess**) shall be:

\$ 25,000,000	Each Occurrence
\$ 25,000,000	Personal & Advertising Limits
\$ 25,000,000	General Aggregate Limit
\$ 25,000,000	Products/Completed Operations Aggregate Limit

**Project Specific Limits**

A minimum of the first \$15,000,000 of coverage must be project specific; i.e., neither the occurrence limit, nor the offense limit, nor the aggregate limits, shall be reduced as the result of any claims arising out of other than the Work arising out of, or in connection with, this Agreement.

Although the occurrence limit in excess of the project specific coverage may be on shared basis with other projects, the aggregate limits shall not be reduced as the result of any claims arising out of other than the Work arising out of, or in connection with, this Agreement.

- h. Except as otherwise specifically authorized in Article 12.3.5 of this Agreement, the Commercial General Liability coverage shall apply on a first dollar basis without application of any deductible or self-insured retention.
- i. The Commercial General Liability coverage shall continue to include products/completed operations coverage for a period of ten (10) years after Final Completion.
- j. Owner Additional Insureds - Commercial General Liability coverage shall include Owner Additional Insureds as additional insureds for liability caused, in whole or in part, by the acts or omissions of a Named Insured, or the acts or omissions of those acting on behalf of a Named Insured, such as that which would be afforded by designating Owner Additional Insureds as additional insureds on the latest edition of the Additional Insured — Designated Person Or Organization (ISO Form CG 20 26) filed for use in the Commonwealth of Virginia by the Insurance Services Office for ongoing operations, and the Additional Insured — Owners, Lessees Or Contractors —Completed Operations (ISO Form CG 20 37), for products and completed operations after ongoing operations.

Blanket additional insured provisions or endorsements which do not specifically designate Owner Additional Insureds as additional insureds shall not be acceptable. Similarly, an additional insured endorsement or provision which states that the coverage for an additional insured:

- i. is limited: to the extent to which the insured is obligated, or permitted, to indemnify the additional insured; or to the additional insured's vicarious liability; or is limited to the extent that the liability was caused by the named insured, or others acting on the named insured's behalf; or
  - ii. does not include the additional insured's strict liability, or the liability of the additional insured for the breach of the additional insured's non-delegable duty; or
  - iii. does not include liability caused by the negligence or other culpability of the additional insured; shall not be acceptable.
4. Contractor's Pollution Liability. The pollution insurance provided by CMR shall conform to the requirements set forth herein:
- a. Such insurance shall be on a form acceptable to Owner, and shall include coverage for liability resulting from pollution or other environmental impairment arising out of, or in connection with, the

Work performed under this Agreement, or which arises out of, or in connection with this Agreement. At a minimum, such insurance must include coverage for the following:

- i. Liability for clean-up of pollution conditions and third-party bodily injury and property damage claims arising from pollution conditions.
  - ii. Clean-up costs and third-party liability arising out of the transportation of hazardous materials to or from the Jobsite, including while such hazardous materials are in transit.
  - iii. Clean-up costs and third-party liability arising out of the disposal, or the recycling, of hazardous materials at a non-owned disposal site.
  - iv. Clean-up costs and third-party liability arising out, of or relating to, the presence of mold or fungi.
  - v. Liability arising out of acts of terrorism. Such terrorism coverage may be provided in accordance with the Terrorism Risk Insurance Act.
- b. the coverage shall be provided on an occurrence basis.
  - c. Such insurance shall include coverage for losses arising out of pollution conditions arising out of the Work under this Agreement that are discovered after all Work under this Agreement is completed (i.e., completed operations coverage). Such coverage shall be subject to the "Per Pollution Incident" limit, and shall apply for a period not less than the applicable period of repose under Virginia law.
  - d. The policy must be endorsed to provide Owner with a minimum of 30 days' notice of cancellation, except for non-payment of premium for which a minimum of 10 days' notice shall be provided.
  - e. Owner Additional Insureds - Pollution Insurance shall include Owner Additional Insureds as "Additional Insureds" for liability caused, in whole or in part, by the acts or omissions of a Named Insured or the acts or omissions of those acting on behalf of a Named Insured. Blanket additional insured provisions or endorsements which do not specifically designate Owner Additional Insureds as additional insureds shall not be acceptable. Similarly, an additional insured endorsement or provision which provides that the coverage for an additional insured:

- i. is limited: to the extent to which the insured is obligated, or permitted, to indemnify the additional insured; or to the additional insured's vicarious liability; or is limited to the extent that the liability was caused by the named insured, or others acting on the named insured's behalf; or
    - ii. does not include the additional insured's strict liability, or the liability of the additional insured for the breach of the additional insured's non-delegable duty; or
    - iii. does not include liability caused by the negligence or other culpability of the additional insured. shall not be acceptable.
  - f. The minimum limits to be maintained by CMR (inclusive of any amounts provided by an umbrella or excess policy) shall be:
    - \$ 10,000,000 Per Pollution Incident
    - \$ 10,000,000 Annual Aggregate or, in lieu of the annual aggregate,
    - \$ 30,000,000 Project Aggregate

Any aggregate limits of coverage shall not be subject to erosion or exhaustion from any liability or cleanup costs other than those connected to the Work under this Agreement.
  - g. Except as otherwise specifically authorized in Article 12.3.5 of this Agreement, the coverage shall apply on a first dollar basis without application of any deductible or self-insured retention.
5. Business Auto Liability. The automobile liability insurance shall conform to the requirements hereinafter set forth:
- a. Business Auto Liability insurance shall be on a form no more restrictive than, and shall cover for those sources of liability which would be covered by Section II of, the latest occurrence edition of the Business Auto Coverage Form (ISO Form CA 00 01) as filed for use in the Commonwealth of Virginia by ISO, without any restrictive endorsements other than those which are required by the Commonwealth of Virginia, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements). Coverage shall include all owned, non-owned and hired autos used in connection with this Agreement.
  - b. The policy must be endorsed to provide Owner with a minimum of 30 days' notice of cancellation, except for non-payment of premium for which a minimum of 10 days' notice shall be provided.
  - c. The minimum limits to be maintained by CMR (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 10,000,000 Each Accident

d. The automobile liability insurance coverage shall apply on a first dollar basis without application of any deductible or self-insured retention.

6. Professional Liability Insurance. The professional liability insurance provided by CMR shall conform to the requirements hereinafter set forth:

a. Such insurance shall be on a form acceptable to Owner, and shall cover CMR for those sources of liability arising out of the rendering of, or failure to render, professional services under this Agreement, including but not limited to, all required preconstruction phase services.

b. The Professional Liability insurance maintained by the CMR shall also include coverage for liability resulting from professional services subcontracted by CMR to others. Provided, however, if the CMR's Professional Liability insurance does not include such additional coverage, the CMR may satisfy this requirement by requiring any such subcontractors to maintain, and provide evidence to Owner of, Professional Liability insurance in the same manner as required of the CMR.

c. The policy must be endorsed to provide Owner with a minimum of 30 days' notice of cancellation, except for non-payment of premium for which a minimum of 10 days' notice shall be provided.

d. The minimum limits to be maintained by CMR (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 10,000,000	Per Claim
\$ 10,000,000	Annual Aggregate or, in lieu of the Annual Aggregate,
\$ 15,000,000	Project Aggregate

Any aggregate limits of coverage shall not be subject to erosion or exhaustion from any liability other than to the Work under this Agreement.

e. Except as otherwise specifically authorized in Article 12.3.5 of this Agreement, the coverage shall apply on a first dollar basis without application of any deductible or self-insured retention.

f. The coverage must either be on an occurrence basis, or a claims-made basis. If coverage is on an occurrence basis, the coverage must be maintained, for the period of repose under Virginia law, for liability resulting from the rendering of, or failure to render,



professional services in the performance of the Work. If coverage is on a claims-made basis, the following provisions shall apply:

- i. Subject to the following Paragraph ii, CMR shall maintain a retroactive date throughout the duration of this Agreement which is not later than the earlier of (a) the commencement of Work by CMR, or (b) if the coverage was previously on an occurrence basis, the original coverage retroactive date for CMR's first claims-made policy.
  - ii. For the duration of this Agreement, if the retroactive date is advanced, or if a policy is materially changed, cancelled or not renewed, CMR shall purchase, at its own expense, an extended reporting period endorsement. This endorsement must provide an extended reporting period ("tail" coverage) for the full period of repose under Virginia law.
  - iii. Upon termination of this Agreement, CMR shall, at its own expense, by continuing claims-made coverage, the purchase of an extended reporting period, or a combination thereof, maintain coverage for claims made within five years after termination for liability arising out of the rendering of, or failure to render, professional services under this Agreement.
  - iv. The claims-made policy or policies shall include a notice of circumstances or similar provision which provides that, if the insurer is notified during a particular policy period about circumstances which are likely to result in a claim, any subsequent claim will be deemed to have been made during the policy period in which the notice of circumstances was given to the insurer.
  - v. A claims-made policy that requires both the claim being made and reported to the insurer during same policy period will not be acceptable. To be an acceptable policy, subject to the claim being made during the policy (or any extending reporting period thereof), the policy must provide a minimum of sixty days to report the claim to the insurer.
7. Crane and Riggers Legal Liability Insurance provided by CMR shall conform to the requirements hereinafter set forth:
- a. If CMR (or its subcontractors of any tier) utilizes a crane in connection with the work, CMR shall provide crane and riggers liability insurance, insuring against physical loss of, or damage to, the property and/or equipment in the care, custody, or control of the rigger, with limits

sufficient for replacement of such property and/or equipment, and/or with limits that comply with any applicable federal, state, or local law or regulation.

8. Cyber Liability Insurance provided by CMR shall conform to the requirements hereinafter set forth:
  - a. CMR shall procure cyber liability insurance with limits of at least **\$10,000,000** per claim and **\$10,000,000** aggregate. Cyber liability insurance shall include coverage for security and privacy liability (including, but not limited to, legal liability and attorneys' fees associated with privacy violations, information theft, intentional and/or unintentional release of private information, and alteration of electronic information), damage to or loss of use of data and equipment (including, but not limited to, media liability), cyber extortion, social engineering, phishing, data breach expenses (including, but not limited to, attorneys' fees, expenses to notify affected individuals and entities, call center expenses, and credit monitoring expenses), and business interruption and extra expense.

#### 12.3.2 Qualification of CMR's Insurers

1. Insurers providing the insurance required to be provided by CMR by Article 12.3.1 of this Agreement must either be: (1) authorized by a subsisting certificate of authority issued by the Commonwealth of Virginia to transact insurance in the Commonwealth of Virginia, or (2) except with respect to coverage for the liability imposed by the Workers' Compensation Act, an eligible surplus lines insurer under Virginia Code.
2. In addition to meeting the respective requirements of Article 12.3.2.1, each such insurer shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better, and a Financial Size Category of "VII" or better according to A. M. Best Company.
3. If, during the period when an insurer is providing the insurance required by this Agreement, an insurer shall fail to comply with the foregoing minimum requirements, as soon as CMR has knowledge of any such failure, CMR shall immediately notify Owner, and shall promptly replace the insurance provided by the insurer with insurance provided by an insurer meeting the requirements.

12.3.3 Evidence of CMR's Insurance. Unless, and to the extent, Owner has in writing agreed otherwise, CMR shall not commence the Work until CMR has procured the insurance required to be provided by CMR under this Article 12.3, and such insurance has been approved by Owner. Unless, and to the extent, Owner has in writing agreed otherwise, CMR shall provide evidence of such insurance in the following manner:

1. As initial evidence of compliance with the requirements for Workers' Compensation/Employer's Liability, and Business Auto Liability, CMR shall furnish Owner with a fully completed satisfactory Certificate of Insurance such as a standard ACORD Certificate of Liability Insurance (ACORD Form 25) signed by an authorized representative of the insurer(s) providing the coverages. The Certificate of Insurance, or other evidence, shall verify that the Workers Compensation And Employers Liability Insurance Policy contains a waiver of subrogation in favor of Owner, and shall identify this Agreement. In addition to the Certificate of Insurance, CMR shall also provide a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies), signed by an authorized representative of the insurer(s), and a copy of the actual Waiver of Subrogation endorsement on the Workers Compensation And Employers Liability Insurance Policy as issued on the policy, signed by an authorized representative of the insurer.
2. As initial evidence of compliance with the requirements for Commercial General Liability and Contractor's Pollution Liability, CMR shall furnish Owner with:
  - a. a fully completed satisfactory Certificate of Insurance, signed by an authorized representative of the insurer(s) verifying inclusion of the Owner Insureds as Additional Insureds., In addition to the Certificate of Insurance, CMR shall also provide a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies), signed by an authorized representative of the insurer(s), and a copy of the actual Additional Insured endorsement signed by an authorized representative of the insurer; or
  - b. the original of the policy(ies).
3. As evidence of compliance with the requirement for Professional Liability, the CMR shall furnish the Owner with a copy of the original policy, or other evidence satisfactory to the Owner, signed by an authorized representative of the insurer(s) providing the coverages.
4. Until such time as the insurance is no longer required to be maintained by CMR, unless, and to the extent, Owner has in writing agreed otherwise, CMR shall provide Owner with renewal or replacement evidence of the insurance in the manner described in Article 12.3.3.1, Article 12.3.3.2, 12.3.3.3, and Article 12.3.3.4, no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.
5. Notwithstanding the prior submission of a Certificate of Insurance, copy of endorsements, or other evidence initially acceptable to Owner, if requested by Owner, CMR shall, within thirty (30) days after receipt of a written

request from Owner, provide Owner with a certified copy or certified copies of the policy or policies providing the coverage required by Article 12.3. CMR may redact, or cause to be redacted, rates and premiums, and any provisions of the policy, or policies, which do not apply with respect to this Agreement.

12.3.4 Insurance Primary and Non-Contributory. The insurance provided pursuant to this Agreement which includes Owner or another Owner Additional Insured as an insured shall apply on a primary basis to, and shall not require contribution from, any other insurance, or self-insurance, maintained by Owner or another Owner Additional Insured.

12.3.5 Deductible or Self-Insured Retention Provisions.

1. The Business Auto Liability, and Railroad Protective Liability, insurance coverage provided by CMR shall apply on a first dollar basis without application of any deductible or self-insured retention.
2. Unless, and to the extent, Owner has in writing agreed otherwise, the maximum self-insured retention or deductible on the insurance provided by the CMR shall be:

\$100,000 Each Accident	Workers' Compensation/Employers' Liability
\$100,000 Each Occurrence \$100,000 Aggregate Offense	Commercial General Liability
\$100,000 Each Pollution Incident	Contractor's Pollution Liability
\$100,000 Each Claim	Professional Liability

3. No such higher deductible or self-insured retention will be allowed unless and until the CMR has received prior written approval from the Owner to use such higher deductible or self-insured retention. The extent to which, if any, Owner agrees to allow a higher deductible or self-insured retention is subject to the sole discretion of the Owner.

4. The CMR shall pay all applicable deductibles, and satisfy all applicable self-retention amounts, with respect to the insurance provided by CMR required by Article 12.3, without any reimbursement from:
  - a. Owner, or any other Owner Additional Insured;
  - b. any Named Insured or Insured which CMR has agreed to include as an insured in the policy to which the deductible or self-insurance applies.

If the CMR fails to promptly pay the deductible, or satisfy the self-insured retention, Owner has the right, but not the obligation, to pay the deductible, or satisfy the self-insured retention, and obtain reimbursement from, or withhold payment otherwise due, CMR for amounts incurred by Owner in paying the deductible or satisfying the self-insured retention.

12.3.6 CMR's Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of CMR, or its Subcontractors, its sub-subcontractors, or its employees or agents to Owner or others. Any remedy provided to Owner or Owner Additional Insureds shall be in addition to, and not in lieu of, any other remedy available under this Agreement or otherwise.

12.3.7 No Waiver by Owner Approval/Disapproval. Neither approval by Owner, nor failure of Owner to disapprove the insurance furnished by CMR, shall relieve CMR of CMR's full responsibility to provide the insurance as required by this Agreement.

12.3.8 Insurance on Subcontractors and Sub-subcontractors. Except to the extent such coverage is provided by CMR's CCIP, CMR shall require its Subcontractors and its sub-subcontractors to maintain any and all insurance required by law. In addition, except to the extent such coverage is provided by CMR's CCIP, unless, and to the extent, Owner has otherwise, in writing, agreed, CMR shall require its Subcontractors and sub-subcontractors to provide insurance in the manner described herein.

1. Except with respect to Subcontractors whose jobsite activities are limited to the delivery or pickup of equipment or supplies to or from the Jobsite such as materialman, suppliers, haulers, drivers, etc., the insurance required for Subcontractors shall include the Workers Compensation/Employers' Liability as described in Article 12.3.2, and the Commercial General Liability as described in Article 12.3.3, with following minimum limits:

Worker's Compensation/Employer's Liability	
\$1,000,000	Each Accident
\$1,000,000	Each Employee

\$1,000,000	Policy Limit
Commercial General Liability	
\$ 1,000,000	Each Occurrence
\$ 1,000,000	Personal & Advertising Limits
\$ 1,000,000	General Aggregate Limit
\$ 1,000,000	Products/Completed Operations Aggregate Limit

2. The insurance required for Subcontractors and sub-subcontractors using or operating automobiles on the Jobsite shall include Business Auto Liability as described in Article 12.3.5 except that the minimum acceptable limits of liability are:

Business Auto Liability	
\$1,000,000 Combined Single Limit	No Aircraft Operation Area (AOA) exposure
\$5,000,000 Combined Single Limit	AOA exposure

- 12.3.9 Modification of Limits. The Owner shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Agreement, and the CMR shall comply with all reasonable requests of the Owner with respect thereto; provided, however, the Owner shall reimburse the CMR for the additional cost, if any, for the CMR to provide altered limits or coverage.
- 12.3.10 CMR's Responsibility for Subcontractors. The CMR is ultimately liable to the Owner for those actions of its subcontractors providing services on assigned work. It is the CMR's responsibility to ensure that its subcontractors are also covered under the required insurance. Copies of the subcontractors' certificates of insurance and insurance policies shall be provided to the Owner upon request.
- 12.3.11 No Reliance by CMR on Required Insurance. The coverages, limits and endorsements required herein protect the primary interests of the Owner. The CMR understands and agrees that it shall not rely upon the coverages, limits and endorsements required herein when assessing the extent or determining appropriate types and limits of insurance coverage to protect the CMR against any loss exposures, arising from or related to this Agreement, the Work or otherwise.
- 12.3.12 Failure to Maintain Required Insurance. The failure to maintain the insurance required herein, including the failure to exercise renewal options, may result in the Owner restricting access to the Jobsite or the Work, the withholding of payment,

the purchase of replacement insurance, the premiums and other costs of which shall be paid by the CMR, or termination of this Agreement or any part thereof.

#### 12.4 Property Insurance

12.4.1 Unless otherwise addressed in the Contract Documents, the Owner shall purchase and maintain an Owner's Property Insurance Program on behalf of the Owner, the CMR and Subcontractors as described in this Article 12.4. For purposes of this Article 12.4, the term "Owner's Property Insurance Program" shall refer to the commercial insurance policy or policies obtained from commercial insurance companies by the Owner pursuant to the Owner's obligation to maintain the Owner's Property Insurance Program, including Equipment Breakdown insurance under this Article 12.4. A Covered Loss for the purposes of this Article 12.4 shall refer to a loss which, but for the application of deductibles in, or limits of, or exclusions to the Owner's Property Insurance Program, are insured as described in the Article 12.4.

12.4.2 The Owner's Property Insurance Program shall commence with respect to the Work at the later date of receipt of Notice to Proceed by the CMR under this Agreement or upon commencement of the Work at the Jobsite.

12.4.3 The Owner's Property Insurance Program coverage for the CMR and its Subcontractors shall terminate at the earliest of the following dates:

- a. With respect to any completed portion of the Work, if the Owner elects to occupy and/or use such completed portion of the Work prior to Substantial Completion, the date the Owner first occupies or uses such completed portion of the Work;
- b. The date of Substantial Completion as certified in accordance with this Agreement;
- c. If Work by the CMR is permanently abandoned or terminated prior to Substantial Completion, at the time such Work is permanently abandoned or terminated; or,
- d. Termination of this Agreement by the Owner.

12.4.4 Property insurance shall be on a Special Form "all-risk" causes of loss policy form, subject to the exclusions and other limitations in the policy. The coverage shall include coverage for theft, flood and earth movement (including sinkhole and earthquake). Owner's obligation to provide insurance for CMR and its Subcontractors shall be limited to providing such insurance in generally accepted form, and shall be subject to the provisions, terms, conditions and exclusions inherent in, or commonly endorsed on, such generally accepted insurance policies. The Owner assumes no responsibility for losses incurred by CMR or its Subcontractors which would not be covered by the terms of the generally accepted policies, including commonly endorsed exclusions.

- 12.4.5 Subject to any sublimits applicable to flood, windstorm and earth movement, the amount of coverage will be equal to the lesser of the total compensation due CMR under the Agreement or the insurable value of the covered property at the Jobsite as described in this Agreement. The limits will apply on an occurrence basis regardless of the number of persons or organizations (including CMR and Subcontractors) insured. The coverage for flood and earth movement, respectively, may be subject to sublimits of no less than \$10,000,000 aggregate. The coverage for windstorm may be subject to sublimits of no less than \$50,000,000 per occurrence.
- 12.4.6 Property insurance provided by the Owner will not provide coverage for equipment, or tools, or any other property of the CMR and Subcontractors which will not become a part of the completed project. The CMR and Subcontractors shall be responsible for insuring the full value of its own interests in any portion of the Work which is located off the Jobsite, or which is in transit.
- 12.4.7 Notwithstanding any provision(s) to the contrary in the Owner's Property Insurance Program, the coverage for CMR and its Subcontractors under the Owner's Property Insurance Program will not include coverage for any loss of income, business interruption, extra expense, soft costs, or any other time element type losses.
- 12.4.8 The Owner shall notify the CMR in writing prior to commencement of the Work if the Owner does not intend to provide such property insurance. In that event, the CMR shall then procure such insurance as will protect the interests of the Owner, CMR and subcontractors, and by appropriate Contract Modification, shall be reimbursed for the actual cost of such insurance.
- 12.4.9 The CMR shall be solely responsible for the payment of any applicable deductible up to a maximum per occurrence of \$100,000. Any loss in the amount of the deductibles described above or less shall be the sole responsibility of CMR.
- 12.4.10 Waivers of Subrogation. The Owner and CMR waive all rights against (1) each other and any of their Subcontractors, agents and employees, each of the other; and (2) the OAR, Consultant, their sub-consultants, separate contractors, if any, and any of their subcontractors, agents and employees, for loss to the Work itself to the extent covered and paid by property insurance obtained pursuant to this Article 12.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. There shall be no waiver of subrogation or any claims pertaining to losses or damages to property other than to the Work itself. The foregoing waiver afforded the OAR, Consultant, their subconsultants, agents and employees or any of them shall not extend to the liability imposed by the indemnification provisions of this Agreement. The CMR shall require from its subcontractors, agents and employees of any of them similar waivers for each in favor of other parties enumerated herein. The policies shall provide such waivers. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium



directly or indirectly, and whether the person or entity had an insurable interest in the property damaged.

12.4.11 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and all proceeds shall be made payable to the Owner as fiduciary for the insureds, as their interests may appear. The CMR shall pay the subcontractors their just shares of insurance proceeds received by the CMR and shall require subcontractors to make payments to their sub-subcontractors in similar manner.

### **ARTICLE 13 SUSPENSION OF WORK; TERMINATION OF THE AGREEMENT**

13.1 Suspension of Work By Owner For Cause. Upon the failure of CMR or its subcontractors or suppliers to comply with any of the requirements of this Agreement or any Addendum, including, but not limited to, CMR's failure to maintain proper safety precautions, Owner shall have the authority to stop or suspend any of the Work affected by such failure until such failure is remedied to the satisfaction of the Owner. Upon receipt of any such Notice, CMR shall, unless the Notice requires otherwise:

1. Immediately discontinue Work on the date and to the extent specified in the Notice;
2. Place no further orders or subcontracts for material, services, or facilities with respect to the suspended Work other than to the extent required in the Notice;
3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Owner of all orders, subcontracts, and rental agreements to the extent they relate to performance of the Work suspended; and,
4. Continue to protect and maintain the Work, including those portions on which Work has been suspended.
5. Upon receipt of Notice to resume suspended Work, CMR shall immediately resume performance of the suspended Work to the extent required in the Notice.

The CMR shall not be entitled to receive any change to the Project schedule or a GMP for Work stopped or suspended by the Owner under this Paragraph 13.1 or for suspensions which are either: (1) made at the request of the CMR for its own convenience; (2) attributable to circumstances caused by the CMR or those for which the CMR is responsible; (3) attributable to circumstances which reasonably could have been anticipated or avoided by the CMR; (4) attributable to inclement weather conditions usually experienced at the Project Jobsite during the relevant time period; or (5) attributable to circumstances otherwise anticipated in the Contract Documents. In addition, no compensation or extension of time will be granted if suspension results from CMR's noncompliance with any requirements of the Contract Documents.

13.2 Suspension of Work By Owner Without Cause. By Notice in writing to CMR, Owner may suspend at any time, at its sole option and for any reason including convenience, the performance of all or any portion of the Work to be performed. Upon such Notice of

Suspension of the Work Without Cause, Owner will designate the amount and type of plant, labor, materials and equipment to be committed to the Jobsite during the period of suspension. CMR shall use its best efforts to utilize its plant, labor, materials and equipment in such a manner as to minimize costs associated with such suspension. In the event of a suspension of work without cause, the CMR shall comply with Paragraphs 13.1 (1) through (5), in addition to the other requirements set forth in this Paragraph 13.2.

As full compensation for such suspension, CMR will be reimbursed for the following costs, without duplication of any item, to the extent that such costs were reasonably incurred and directly result from such suspension of the Work without cause:

1. A reasonable standby charge to be paid to CMR during the period of suspension of the Work, which standby charge shall be sufficient to compensate CMR and its subcontractors for keeping, to the extent required in the Notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs, as determined to be equitable by Owner, associated with demobilization and subsequent remobilization of CMR's plant, forces, subcontractors and equipment; and
3. An equitable amount determined by the Owner in its sole discretion to reimburse CMR for the cost of maintaining and protecting that portion of the Work upon which Work has been suspended.
4. Any claim on the part of CMR for such compensation must be made within ten (10) days after receipt by CMR of a Notice to suspend the Work or it shall be deemed waived by the CMR.

In the event of a suspension of the Work without cause for more than sixty (60) calendar days, if as a result of any such suspension of the Work, the cost to CMR of subsequently performing the Work is increased or decreased solely as result of the suspension, an equitable adjustment may be made, in accordance with Paragraph 10.3. Any request for additional time or compensation shall be made within ten (10) days after receipt of Notice to resume the Work, and CMR shall include a revised Project Schedule for review and approval by Owner. The CMR waives and releases all claims related to the suspension of the Work by failing to comply with this paragraph.

In the event such suspension continues for more than ninety (90) calendar days and if the CMR has fully complied with the suspension notice and the requirements of the Contract Documents, the Owner may pay the CMR any amount of retainage for Work that was satisfactorily completed by CMR, approved and accepted by Owner.

### 13.3 Termination by Owner for Cause and Owner's Right to Perform CMR's Obligations.

13.3.1 If the CMR fails to perform any of its obligations under this Agreement, including any obligation to perform Work with its own forces, the Owner may take corrective action to remedy such deficiencies, after written notice to the CMR and CMR's failure to make good such deficiencies within seven (7) days. The Owner may

extend the cure period if the CMR has made substantial progress towards curing the deficiency or otherwise taken reasonable action to begin correcting such deficiencies to the Owner's satisfaction. Without limiting the Owner's other remedies under this Agreement, the Owner may modify a GMP budget, reducing the Direct Cost of the Work and/or General Conditions budget, as appropriate by the actual cost to the Owner of making good such deficiencies.

13.3.2 Under the following circumstances, the Owner may, without prejudice to any right or remedy and after giving the CMR and its surety, seven (7) calendar days written notice and opportunity to cure (which may be extended by the Owner if the CMR has made substantial progress towards curing the deficiency or otherwise taken reasonable action to begin correcting such deficiencies to the Owner's satisfaction), terminate this Agreement or any portion thereof and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CMR, and may finish the Work by whatever method the Owner may deem expedient:

- (i) if the CMR is adjudged bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency,
- (ii) if the CMR persistently or repeatedly refuses or fails, except in a case for which extension of time is provided, to supply enough properly skilled workers, supervisory staff or fails to have available at the Jobsite, the proper materials or equipment for the Project and fails to maintain an established Project Schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Project Team,
- (iii) if the CMR refuses or fails to properly perform the Work or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable or unsuitable,
- (iv) if the CMR fails to commence Work, maintain adequate progress of the Work or discontinues prosecution of the Work,
- (v) if the CMR fails to carry out the requirements of the Owner's small and minority business participation program(s),
- (vi) if any representation made by the CMR herein was false or materially misleading when made,
- (vii) if the merger, acquisition, sale or transfer of assets of CMR occurs which has a material adverse effect on the CMR's net worth or on CMR's ability to meet its obligations under this Agreement or results in the assumption of this Agreement or any Addendum by any other person, in any case without the prior written consent of Owner,

- (viii) if, without reasonable justification, the CMR fails to make prompt payment to subcontractors for materials or labor,
- (ix) if the CMR persistently disregards laws, rules, ordinances, regulations, codes, or orders of any public Authority Having Jurisdiction,
- (x) if the CMR fails to provide required insurance coverage, or if such insurance coverage is canceled, terminated, or modified so that the required insurance coverage is no longer in full force and effect,
- (xi) if the CMR fails to furnish the required performance and payment bond, or if, at any time, the Surety executing either bond no longer complies with the requirements of this Agreement and the CMR fails to furnish an acceptable substitute Surety within ten (10) business days after Notice from the Owner, or
- (xii) if the CMR otherwise breaches a material provision of the Agreement.

In such case, the CMR shall not be entitled to receive any further payment until the Project is finished and the CMR shall not be relieved from its indemnification and warranty obligations. Reasonable expenses incurred by the Owner may be deducted from any payments left owing the CMR (excluding monies owed the CMR for subcontract Work), without limiting the Owner's other remedies under this Agreement.

13.3.3 If the CMR refuses to allow public access to any documents, papers, letters, or other material subject to the inspection provisions of the Virginia Freedom of Information Act, Chapter 37, §2.2-3700 et seq., Va. Code, and made or received by the CMR in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the CMR and its surety, if any, seven (7) days written notice, during which period CMR still fails to allow access, terminate the employment of the CMR and take possession of the Project Jobsite and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the CMR, and may finish the Project by whatever method the Owner may deem expedient. In such case, the CMR shall not be entitled to receive any further payment until the Project achieves final completion. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the CMR.

13.3.4 This Agreement may be terminated, at the option of the Owner, if the CMR submitted a false certification or has otherwise violated Federal Acquisition Regulation (FAR) Subpart 25.7, Section 25.700 *et seq.* In such case, the CMR shall not be entitled to receive any further payment until all of the Project(s) achieve final completion. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing to the CMR.

13.3.5 Upon a determination that a termination of this Agreement other than a termination without cause was wrongful or improper for any reason, such termination shall

automatically be deemed converted to a termination by Owner without cause, and the CMR's remedy for such wrongful termination shall be limited to the recoveries specified under Article 13.

#### 13.4 Termination by Owner Without Cause.

13.4.1 The Owner, in its sole discretion, and for any reason or no reason at all, may terminate this Agreement or any portion thereof, effective on seven (7) days written Notice of Termination to the CMR. In such event, the Owner shall reimburse the CMR for any Direct Cost of the Work and General Conditions costs that were incurred by the CMR before the date of termination. The Owner shall also pay to the CMR fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained, as well as reasonable move-out and demobilization costs. In such event, following payment as provided herein, and at the sole discretion of the Owner, the Owner may require the CMR to assign to the Owner any subcontract. As a condition of receiving the payments referred to in this Paragraph 13.4, the CMR shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights as requested by the Owner, or as the Owner may require for the purpose of fully vesting the rights and benefits of the CMR under such obligations or commitments.

13.4.2 After the submission of a proposed GMP or at the completion of the Preconstruction Phase for the Project, if the final cost estimates or lack of funding make the Project no longer feasible, such determination being at the sole discretion of the Owner, the Owner may terminate this Agreement or any portion thereof, and pay the balance of the Preconstruction Services Compensation that is due on services rendered as of the date of termination. No fees for activities not yet undertaken or authorized by the Owner shall be paid.

13.4.3 The payments to CMR pursuant to the foregoing paragraphs shall be the sole right and exclusive remedy of CMR upon any such termination. CMR shall have no other claims for damages, including any additional fees or any anticipated profits on account of termination.

13.4.4 Upon receipt of a Notice of Termination, CMR and its subcontractors shall, unless the Notice requires otherwise:

1. Immediately discontinue the Work or portions thereof that can be discontinued without creating a hazardous condition, on the date and to the extent specified in the Notice.
2. Cancel all outstanding commitments for labor, materials, equipment, and apparatus on the terminated portion of the Work that may be canceled without undue cost. CMR shall notify Owner of any commitment that cannot be canceled without undue cost and Owner shall have the right to accept delivery or to reject delivery and pay the agreed upon costs;

3. Place no further orders or subcontracts for labor, materials, services, or facilities, other than as may be necessary or required for completion of such portion of the Work under the Project that is not terminated;
4. Assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of property acquired by Owner under any Addendum.

13.5 Termination by the CMR. If the Project in its entirety is stopped for a period of one hundred eighty (180) days under an order of any court or other public Authority Having Jurisdiction or as a result of an official act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CMR, its agents, employees, subcontractors or suppliers, and Owner and CMR are unable to reach agreement concerning compensation to CMR during the suspension and other material matters concerning the status of the Project during the period of suspension, then the CMR may, upon thirty days written notice to the Owner, terminate this Agreement and submit a final Application for Payment for Work satisfactorily performed in accordance with the Agreement. The Construction Manager shall not be entitled to any other damages or compensation, specifically including any unearned fees or anticipated profits.

#### **ARTICLE 14 ASSIGNMENT**

Neither the Owner nor the CMR shall assign its interest in this Agreement or any portion thereof without the written consent of the other.

#### **ARTICLE 15 CLAIMS AND REMEDIES**

15.1 No Guarantee of Work. The CMR understands and acknowledges that it is not entitled to receive any Construction Phase Work under this Agreement. The CMR hereby waives any and all claims for anticipated profits and all claims for damages of any other kind based upon the Owner's decision to not proceed with the Project or any portion thereof.

15.2 Claims Process. The Owner's liability to CMR for any claims arising out of or related to the subject matter of this Agreement (including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages, or losses because of Unforeseen Conditions as defined in Article 10 or for additional Work), shall be governed by the following provisions:

1. If a CR is denied and the CMR disagrees with the denial, the CMR must submit a written Notice of Claim to the OAR, copying the Owner's Executive Vice President & Chief Development Officer, within 5 business days of receipt of the notice of the denial. The Notice of Claim must include a copy of the denial and a detailed statement of all elements of the claim, a description of the Work affected, a timeline or schedule of events related to the claim and an itemized, detailed cost breakdown sufficient to analyze the value and time impact of the claim, specifically describing all cost and time impacts. The CMR shall follow the protocol that is established for

its delivery of Notices of Claims, which must include a transmittal signed by the Owner or designee confirming receipt. The CMR waives all claims and releases the Owner from all liability for potential claims when a Notice of Claim is not timely submitted. Daily reports, Applications for Payments and other administrative documents required by this Agreement do not constitute written Notice of a Claim.

2. For any claim made by the CMR against the Owner, including but not limited to, those which include in whole or in part a claim by a subcontractor, or any other person or entity under the CMR's control, for acts or omissions allegedly attributable to the Owner, the CMR must certify by affidavit that it has carefully examined each claim and/or subcontractor's claim and has verified the accuracy and contract compliance of each claim, the claim is submitted in good faith, the documents are true and accurate to the best of the CMR's knowledge and belief, the amount requested accurately reflects the adjustment for which the CMR believes the Owner may owe, and that the signatory is duly authorized to certify the claim on behalf of the CMR. Such certification under oath must be made by the CMR prior to the submission of any subcontractor claim to the Owner and shall constitute an express condition precedent to the CMR having a cause of action against the Owner that includes a subcontractor's claim. A copy of such certification shall be provided to the Owner contemporaneous with the submission of any subcontractor claim to the Owner. The Owner will not consider any claim that has not been properly certified by the CMR.
3. The CMR's compliance with the CR requirements of Article 10.2 and the Notice of Claim and documentation requirements set forth in Paragraphs 15.2 (1) and (2) is an express condition precedent to the CMR having a cause of action against the Owner and to any other dispute resolution process in this Agreement. The failure to comply with Paragraphs 10.2 and 15.2 (1) and (2) shall constitute a waiver of the claim.
4. The parties shall make every reasonable effort to work in good faith and cooperate to fully resolve any claim and agree upon a Contract Modification.
5. If an agreement cannot be reached on a properly submitted claim, either party may provide written notice of the unresolved dispute and request mandatory pre-suit mediation as further described in Article 15. Such request for mandatory pre-suit mediation of the dispute shall be made within 10 business days after a final decision has been reached on the dispute (i.e., the Owner's denial of the claim or any portion thereof). The Owner, OAR, CMR, and Consultant shall all be provided a copy of the notice. The notice shall state clearly and in detail the specific issue to be addressed by the mediator, the basis for the party's objection to the final decision made by the other party, and the requested recommendation of the mediator.
6. PRE-SUIT MEDIATION

All claims, disputes, or other matters in question arising out of or relating to the Agreement may, based on mutual agreement between the Owner and the CMR, be

submitted to pre-suit mediation under the auspices of a mediator to be selected by the parties. The mediation shall be nonbinding but must occur before a lawsuit is filed. No administrative appeals procedure pursuant to § 2.2-4365, Va. Code has been established for contractual claims under this Agreement. Each party shall equally bear the costs of mediation and shall be solely responsible for its own attorneys' fees and other legal costs prior to and during the mediation process. In the event the dispute does not settle at mediation, either party may file a lawsuit in the appropriate Court as set forth in the Agreement.

15.3 Jurisdiction, Venue and Governing Law. Action on any unresolved claim shall be brought only in the state or federal courts located in the City of Norfolk, Virginia. The parties hereby consent to the personal jurisdiction and exclusive venue of the state or federal court in the City of Norfolk, Virginia. The laws of the Commonwealth of Virginia shall govern all claims and this Agreement shall be governed by and interpreted solely in accordance with the laws of the Commonwealth of Virginia.

15.4 Jury Trial Waiver.

TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY ON ANY ISSUES ARISING FROM OR RELATED TO THIS AGREEMENT OR THE PROJECT.

15.5 Cumulative Remedies. All Owner remedies provided in this Agreement (except Liquidated Damages) shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available at law or in equity.

15.6 Member Protection. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreements or documents pertaining to the Services of the CMR or any subcontractor hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against the Owner or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any law in the Code of Virginia or otherwise, under or independent of this Agreement, shall be had against any Commissioner, officer, employee or agent, as such, past, present or future, of Owner either directly or through Owner or otherwise, for any claim arising out of this Agreement or the Services rendered pursuant to it, or for any sum that may be due and unpaid by the Owner. Any and all personal liability of every nature, whether at common law or in equity, or by any law in the Code of Virginia or by constitution or otherwise, of any Owner member, officer, employee or agent as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement for the Services rendered pursuant to it, or for the payment for or to the Owner, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the Owner, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

15.8 Waiver of Consequential Damages. CMR waives all claims to recover consequential damages from Owner relating to its performance on the Project and the actions of the



Owner and its agents, including Consultant. This express waiver shall not be construed as a provision extinguishing CMR's right of recovery for unreasonable delay in performing this Agreement to the extent caused by the acts or omissions of the Owner, its agents or employees due to causes within their control.

## **ARTICLE 16 PROJECT RECORDS, AUDIT RIGHTS AND COPYRIGHTS**

- 16.1 CMR's Project Records, Access to Project Records, Owner's Audit Rights and Document Retention. The CMR's Project Records shall be made available, during normal work hours and at other times with reasonable notice, to the Owner and its authorized representatives, each of whom has the right to inspect and make copies without limitation. CMR shall maintain all Administrative Records identified in Paragraph 2.5 and all other records, books, files, correspondence, documents, receipts, vouchers, invoices, memoranda, and similar data relating to the Work performed under this Agreement (hereinafter collectively called the "Project Records") whether paper, electronic, or other media, in a proper business-like fashion, conforming to accepted accounting principles, and in such detail as will properly and accurately reflect the Work performed under this Agreement, as well as the costs thereof. CMR shall preserve and make available all Project Records for a period of five (5) years from the date of final payment, termination settlement, or until the conclusion of any claim, litigation or appeal, whichever is longer; or for such longer period, if any, required by applicable law or regulation.
- 16.1.1 At Owner's expense, Owner, VDOT, Virginia Department of Aviation, Federal Aviation Administration or an independent certified public accountant designated by either shall have the right to audit, copy and inspect the Project Records and accounts, whether paper, electronic, or other media, and electronically stored information, at all reasonable times during the course of such Work and for the above five (5) year period. Records of costs incurred shall include the general accounting records and the Project Records, together with supporting documents and records of all subcontractors and suppliers performing Work, and all other records considered necessary by the Owner or the VDOT for a proper audit of Project costs.
- 16.1.2 Upon written notice by the Owner, the CMR shall immediately make available at its office at all reasonable times the Project Records in Section 16.1 of the Agreement for examination, audit, or reproduction. While the examiners or auditors are at the CMR's offices, the CMR shall provide the examiners or auditors with (i) acceptable working space that can be secured, (ii) unrestricted access to the workspace provided, (iii) unrestricted access to the Project Records in Section 16.1 of the Agreement, and (iv) free access to office quality copiers.
- 16.1.2.1 Notice shall be in writing, delivered by hand or by certified mail, and shall provide no fewer than five (5) Days' notice of the examination or audit, unless exigent circumstances require less notice.

- 16.1.2.2 The Owner may take possession of the Project Records noted in Section 16.1 of the Agreement by reproducing documents for off-site review or audit.
- 16.1.2.3 When requested in the Owner's written notice of examination or audit, the CMR shall provide the Owner, within the time period indicated in Paragraph 16.1.2.1 of the Agreement, with copies of all requested electronic documents and electronically stored information in a usable format, which is acceptable to the Owner, that allows the Owner to access and analyze all such documents and information. If certain electronic documents and information require proprietary software to access and analyze, the CMR shall provide the Owner with full access for at least two individuals to the proprietary software for the duration of the examination or audit to allow the Owner to access and analyze all such documents and information.
- 16.1.3 The Owner may examine, audit, or reproduce the materials and Project Records under this Section 16.1 of the Agreement from the Request for Qualifications date until five (5) years after the later of final payment under this Agreement or the settling of all claims.
- 16.1.4 The Owner has sole discretion as to the selection of examiners or auditors and the scope of any examinations or audits.
- 16.1.5 Failure by the CMR to make available any of the Project Records or materials, or refusal to cooperate with an examination or audit, as required by Section 16.1 of the Agreement shall be deemed a material breach of the Agreement and grounds for termination for cause.
- 16.1.6. If any audit reveals overcharges or charges not in accordance with the provisions of the Agreement:
- 16.1.6.1 The CMR shall refund the amount overcharges or improper charges upon demand, including interest at 1% per month, or the maximum allowed under the Code of Virginia, from the date such overcharges or improper amounts were paid to or on behalf of the CMR.
- 16.1.6.2 If the overcharges exceed \$100,000.00, the CMR shall repay the Owner the costs it incurred for such audit.
- 16.1.6.3 Overcharges or improper charges shall include any amounts included in accepted CRs, accepted Force Account amounts, or approved Contract Modifications that do not comply with the provisions of the Agreement, and the provisions of this Subsection 16.1.6 of the Agreement shall supersede all other provisions of the Agreement, including, but not limited to, the precedence of Contract Documents in Section 1.3.7 of the Agreement.
- 16.2 Confidentiality. The CMR shall not, during the term of this Agreement and forever thereafter, knowingly divulge, furnish or make available to any third person, firm or organization, without the Owner's prior written consent, or unless incident to the proper performance of the CMR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any information generated by the CMR or received from the Owner, concerning the Services rendered by the CMR or any subcontractor pursuant to this Agreement. ("Confidential Information") The Owner's intent is to protect security and proprietary information. The Owner does not intend to restrict the CMR from normal publication, marketing or awards activities, or to

contravene any public records or Virginia Freedom of Information Act laws, and will not unreasonably withhold its consent.

16.3 Sensitive Security Information. If the Owner or any federal agency, such as the United States Department of Transportation, Federal Aviation Administration, Federal Transit Administration, Department of Homeland Security or the Transportation Security Administration, designates the construction plans, drawings or any other documents as containing sensitive security information (“SSI”), the CMR shall not, during the term of this Agreement and forever thereafter, divulge, furnish or make available the sensitive security information to any third person, firm or organization, without the Owner’s knowledge and prior written consent, including requests for said information made in the course of judicial or legislative proceedings where such information has been properly subpoenaed, and also including releasing and reproducing the security sensitive information within the CMR’s firm and among the CMR’s subcontractors. The CMR agrees to execute and comply with any Nondisclosure Agreement required by the Owner to protect against the dissemination of any information that has been designated as sensitive security information. Violation of the federal regulations regarding sensitive security information is grounds for a civil penalty and other enforcement or corrective action by DOT. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

16.4 Ownership, Patents, Trademarks, and Copyrights.

16.4.1 Unless otherwise set forth below, all work product generated under this Agreement is and shall be the property of the Owner, including all electronic data and records, such as Building Information Modeling (“BIM”). The CMR, subcontractors, and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents that are appropriate to and for use in the execution of their Work under the Contract Documents. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Work are not to be construed as a publication in derogation of the Owner’s ownership or other reserved rights.

16.4.2 CMR shall grant to Owner an assignable, irrevocable, nonexclusive, royalty-free license, for use in connection with operation, maintenance, repair or alteration of the Work or any portion thereof, with respect to any invention based wholly or in part on or derived from proprietary information received from Owner and conceived or first reduced to practice by CMR, its employees or agents during the course of the Work.

16.4.3 CMR further agrees to grant and hereby grants to Owner an assignable, irrevocable, nonexclusive, royalty-free license, under all patents, trademarks, copyrights, trade secrets and similar rights now or hereafter owned or controlled by CMR, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by CMR under this Agreement.

- 16.4.4 CMR further agrees to secure from all subcontractors, suppliers and others, and convey to Owner, all licenses and other rights to use all patents, trademarks, copyrights, trade secrets and similar rights associated with the Work, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by CMR under this Agreement. The CMR shall pay all royalties and license fees.
- 16.4.5 Drawings, prints, technical documents and data, including all electronic data and records, such as Building Information Modeling (“BIM”), prepared or developed by CMR, subcontractors or suppliers and furnished to Owner in the performance of the Work shall be the property of Owner and may be used by Owner without restriction. Owner shall have the right to reproduce any and all Drawings, prints, technical documents or other data received from CMR that are considered necessary for engineering, construction, start-up, commissioning, maintenance, or other purposes related to the Project, despite any notice to the contrary appearing on the document.
- 16.4.6 CMR shall, at CMR’s own expense, defend all suits or proceedings instituted against Owner through counsel selected by CMR and reasonably satisfactory to Owner, and shall fully indemnify and hold Owner harmless and otherwise pay any award of damages and all costs (including, but not limited to court costs and attorney’s fees) assessed against the Owner, in such suits or proceedings, but only to the extent of the negligence or wrongful misconduct of the CMR and its subcontractors, insofar as the same are based on (i) any claim that the material, equipment, apparatus or other item furnished under this Agreement or any Addendum or any part thereof and not specified by the Contract Documents constitutes an infringement of any United States patent, trademark or copyright, or (ii) any claim that the performance of the Work by CMR, including the use of tools, implements or construction constitutes an infringement of any United States patent, trademark or copyright; provided that Owner shall give to CMR prompt notice in writing of the institution of any such suit or proceeding and shall furnish CMR (at CMR’s expense) all needed information, authority, and assistance to enable CMR to defend the same. The CMR shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Contract Documents, except to the extent that such infringement or copyright violation should have been discovered by the CMR during the performance of its Work, including all Preconstruction Services. If such material, equipment, apparatus, or other item is in any such suit or proceeding held to constitute infringement and its use is enjoined, CMR, within a reasonable time, shall either secure for Owner at CMR’s own expense, the right to continue using said material, equipment, apparatus or other item by suspension of the injunction or by procuring for Owner a license to use the infringing material, equipment, apparatus, or other item. In lieu of the foregoing, CMR at its own expense and as the Owner may elect shall replace such material, equipment, apparatus or other item with non-infringing material, equipment, apparatus or item or shall modify it so that it becomes non-infringing.

The ultimate remedy shall be without damage or injury to any other property of Owner and shall be at CMR's sole expense.

16.5 Public Records. When the CMR receives any request to inspect or copy any records that relate to this Agreement, it shall promptly provide the Owner with a copy of the request. The Owner will respond to each such request on behalf of itself and the CMR and the CMR agrees to fully cooperate with the Owner with regard to all records requests and comply with all decisions made by the Owner regarding the production/disclosure. The CMR shall:

1. Keep and maintain all documents, papers, letters, and other material, including electronic communications, which are made or received by the CMR in conjunction with this Agreement.
2. Upon request, provide the Owner with immediate access to all such records at no cost.
3. Ensure that any record that is confidential or exempt from public records disclosure requirements is not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and upon termination or completion of this Agreement, transfer, at no cost to the Owner, all such records in the possession or control of the CMR or keep and maintain the public records required by the Owner and the law to perform the Work. If the CMR transfers all public records to the Owner upon completion or termination of the Agreement, the CMR shall destroy any duplicate public records that are confidential and exempt from public records disclosure requirements. If the CMR keeps and maintains public records upon completion or termination of the Agreement, the CMR shall meet all applicable requirements for retaining public records.
5. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.
6. The CMR shall promptly provide the Owner with a copy of any request to inspect or copy public records in possession of the CMR at a cost that does not exceed the cost provided in Chapter 37, §2.2-3700 *et seq.* of the Code of Virginia, as amended, or as otherwise provided by law.
7. Failure to grant such public access or otherwise comply with the Owner's request for records will be grounds for immediate termination of this Agreement by the Owner. In the event of such failure, the Owner shall also enforce the Agreement provisions in accordance with the Agreement.
8. Failure to provide the public records to the Owner within a reasonable time may also subject the CMR to penalties under Chapter 37, § 2.2-3714 of the Code of Virginia, as amended, or as otherwise provided by law.

9. If a civil action is filed against the CMR to compel production of public records relating to this Agreement, CMR will be solely responsible and liable for its attorney's fees and any resulting damages.

**IF THE CMR HAS QUESTIONS REGARDING THE APPLICATION OF TITLE 2.2, CHAPTER 37 OF THE CODE OF VIRGINIA (FREEDOM OF INFORMATION ACT) OR TITLE 42.1, CHAPTER 7 OF THE CODE OF VIRGINIA (PUBLIC RECORDS ACT), TO THE CMR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CMR MUST CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS, WHO CAN BE REACHED AT: Tel: 757-857-3351; Email [arondeau@norfolkairport.com](mailto:arondeau@norfolkairport.com); Norfolk Airport Authority, Public Records, 2200 Norview Avenue, Norfolk, Virginia 23518.**

## **ARTICLE 17 MISCELLANEOUS PROVISIONS**

- 17.1 Survival of Provisions. In order that the Parties to this Agreement may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work, any provisions of this Agreement that are required to ensure exercise of such rights or performance shall survive termination of this Agreement regardless of the cause for such termination and regardless of whether or not such termination applies to all or only part of the Agreement. Specifically, all audit provisions shall survive termination of this Agreement and all warranty, claims and indemnification provisions shall survive the expiration or termination of this Agreement with respect to any acts or omissions occurring during the term of this Agreement and shall not be affected or reduced by any information with which the Owner has been provided or may otherwise obtain in the future.
- 17.2 Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. In the event any such provision of this Agreement is declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.
- 17.3 No Waiver. No waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement by either party at any time shall in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding.

## **ARTICLE 18 COMPLIANCE WITH LAWS AND REGULATIONS**

The CMR and its employees and representatives shall at all times keep fully informed of, and observe and comply with, all applicable laws which in any manner affect those engaged or

employed on, or which in any way affect the conduct of, the Work which are in effect at the time the Work is performed under this Agreement.

- A. The CMR shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby. The CMR shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed, including, but not limited to being licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3, Code of Virginia, and by applicable regulations.
- B. This Agreement and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the “right to work.” The CMR and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- C. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Agreement, the CMR certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens and otherwise will comply with the requirements of § 2.2-4311.1, Va. Code.
- D. E-VERIFY PROGRAM: Pursuant to § 2.2-4308.2 Va. Code, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions may be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment may cease upon the employer’s registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
- E. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all Work under this Agreement. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative warrant.
- F. The CMR, if not licensed as an asbestos abatement contractor in accordance with § 54.1-514 Va. Code, shall have any necessary asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors for the Work required.
- G. Lead Based Paint Activities: If the Contract Documents indicate that lead based paint is present on existing materials, components, or surfaces, the CMR shall conform to the following:

- i. The requirements set forth in 40 C.F.R. Part 745 - Lead; Requirements for Lead based Paint Activities in selecting and performing the means, methods and procedures for performing the Work. This includes, but is not limited to, training of personnel, lead abatement, encapsulation of lead containing materials, removal and handling of lead containing materials, and methods of disposal.
- ii. The requirements for employee protection contained in 29 CFR Part 1926, Subpart D, and the requirements for record-keeping contained 29 CFR Part 1910.
- iii. The Virginia Department of Labor and Industry's (DLI) Emergency Regulation published in the May 27, 1996 Virginia Register, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI.

H. If the Work includes any land disturbing activities, the CMR shall have on-site an individual certified by the Department of Conservation and Recreation as a Responsible Land Disturber in accordance with §10.1-563, Va. Code.

#### 18.1 Title VI

General Civil Rights Provision. The CMR assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the CMR from the initial solicitation through the completion of the Contract.

#### 18.2 EEOC

The CMR shall not discriminate against any employee or applicant from employment because of race, age, ethnicity, disability, religious belief, creed, color, sex or national origin. Such action shall include, but not be limited to the following: Employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. This provision shall be included in all subcontracts. The CMR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.

#### 18.3 Nondiscrimination

During the performance of this Agreement, the CMR agrees as follows:

.1 CMR shall comply with the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, the Virginia Human Rights Act, as amended, and the laws of the Commonwealth of Virginia and all Executive Orders in effect at the time of the Work which safeguard individuals from unlawful discrimination in employment.



.2 § 2.2-4311 and § 2.2-4201 Va. Code, and executive orders in effect shall be applicable to the Work of the Agreement. During the performance of this Agreement, CMR agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of § 2.2-4311 and § 2.2-4201, Va. Code.
- c. If the Contractor employs more than five (5) employees, the Contractor shall: (i) provide annual training on the CM's sexual harassment policy to all CM's supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees who are required to complete sexual harassment training provided by the Commonwealth of Virginia Department of Human Resource Management; and (ii) post the CM's sexual harassment policy in: (a) a conspicuous public place in each building located in the Commonwealth that the CM owns or leases for business purposes; and (b) the CM's employee handbook

The CMR shall include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions shall be binding upon each subcontractor or vendor.

.3 Where applicable, the Virginians with Disabilities Act and the Federal Americans with Disabilities Act shall apply to the CMR and all Subcontractors.

.4 The Owner does not discriminate against faith-based organizations as defined in § 2.2-4343.1(B), Va. Code.

**REMAINDER OF PAGE INTENTIONALLY BLANK**

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have executed this Agreement and affixed their corporate seals, effective as of the date set forth above.

**NORFOLK AIRPORT AUTHORITY**

\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

CMR [ADD CMR NAME]

\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A**

**PUBLIC NOTICE OF CONSTRUCTION MANAGEMENT AT RISK SERVICES  
FOR CONSOLIDATED RENTAL CAR FACILITIES PROJECT**

**PROJECT:** Consolidated Rental Car Facility  
**LOCATION:** Norfolk International Airport  
**DATE:** October 3, 2024  
**PROJ #:** RFQ-FY25-100-3

The Norfolk Airport Authority (NAA) is seeking Qualifications and Proposals from a qualified General Contractor or Team (Offeror) interested in providing Construction Manager at Risk (CMR) to execute the construction of the Consolidated Rental Car Facility (ConRAC) at Norfolk International Airport (ORF) in Norfolk, VA. The selected Offeror will be tasked with providing preconstruction services in collaboration with the Owner and Design Team as well as Construction Services.

The RFQ/P documents including subsequent Addenda will be posted at the following locations:

- ORF website: <https://www.norfolkairport.com/purchasing>
- The Norfolk Builders & Contractors Exchange: <https://bceva.com/>.
- eVA: <https://eva.virginia.gov/>
- By Contacting the Procurement Manager directly: [Ruben.Rivas@Greshamsmith.com](mailto:Ruben.Rivas@Greshamsmith.com)

NAA's procurement policy for CMR solicitation is a two step process which will require Offerors to respond to a Request for Qualifications (RFQ) resulting in a shortlist followed by a Request for Proposal (RFP).

A pre-proposal conference and site tour is scheduled for the time, date and location noted in the Procurement Schedule provided in the RFQ documents. Attendance is highly encouraged, but not mandatory. The purpose of the conference is to discuss the RFQ requirements and to familiarize each Offeror with the site and the Project as currently progressed.

The Project consists of constructing a new consolidated rental car facility (ConRAC) and all associated necessary ancillary work. The ConRAC is generally described as a 270,000 square foot parking structure consisting of three levels and a fourth level hard cap. Additionally, a Quick Turnaround facility used by the rental car companies to clean and fuel vehicles will be constructed adjacent to the parking structure. Refer to Exhibit H of the RFQ documents for concept drawings available at the time of posting this RFQ. Scope is subject to change however, Offerors should anticipate the final project scope to be similar to what is documented in the noted exhibit.

**EXHIBIT B**

**CMR'S PRICE PROPOSAL SUBMITTED IN RESPONSE  
TO THE REQUEST FOR PROPOSALS**

**EXHIBIT C**

**SPECIAL SECURITY MEASURES – TERMINAL CONSTRUCTION**

---

## SPECIAL SECURITY MEASURES – TERMINAL CONSTRUCTION

### PART 1 - GENERAL

#### 1.01 SECTION INCLUDES

- A. Security measures including formal security program and entry control.

#### 1.02 DEFINITIONS & REQUIREMENTS

- A. **AIRCRAFT OPERATIONS AREAS:** For the purpose of construction projects, the term “Aircraft Operations Area” (AOA) shall mean the entire area within the Airport, secured by fencing or other devices, the access to which is restricted and so posted.
- B. **AIRCRAFT MOVEMENT AREA:** For the purpose of construction projects, the term “Aircraft Movement Area” shall mean any area of the Airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft including prescribed minimum clearance distances from these areas. An aircraft movement area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to designated runways, taxiways, or aprons. Aircraft movement areas at Norfolk International Airport are within the Aircraft Operations Area and movement of all equipment and/or vehicles in these areas must have radio contact with the FAA ground control.
- C. **AIRPORT FACILITIES:** The enclosed building, terminals, facilities, sheds or other structures that are within the airport property but outside the AOA.
- A. **SECURE AREAS:** Areas that require all personnel to have in their possession proper security identification issued by the FAA. This includes the AOA and certain Secure Areas within the Airport Facilities. Construction personnel that work within Secure Areas are required to have proper security identification issued by the Airport Authority.
- D. **PROJECT LIMITS:** The area designated as such on project drawings.

#### 1.03 SECURITY PROGRAM

- A. Initiate program prior to project mobilization.
- B. Protect the work, existing premises, and Owner's operations from theft, vandalism, and unauthorized entry.
- C. Maintain program throughout construction period until Owner use/occupancy.
- D. Project personnel are not permitted within any of the Airport Facilities.
- E. Project personnel are not permitted within any Secure Areas without proper security identification issued by the Airport Authority.

---

## 1.04 ENTRY CONTROL

- A. The contractor's project manager and job superintendent are required to obtain proper security identification issued by the Airport Authority. Contractors and subcontractors construction personnel that need to access Secure Areas are required to obtain proper security identification issued by the Airport Authority.
- B. Restrict and control entrance to Secure Areas, and AOA areas to construction personnel with proper security identification issued by the Airport Authority.

## PART 2 - PRODUCTS - NOT USED

## PART 3 - EXECUTION

### 3.01 SECURITY

- A. Security - In regard to any work required hereunder within the Aircraft Operations Area (AOA) and/or Secure Areas, the Contractor shall:
  - 1. Comply with all applicable federal, state, and local laws and regulations as may be in effect or as may be amended to meet airport security requirements.
  - 2. **CONTRACTOR'S ACCESS TO SECURE AREAS AND THE AOA.** The Federal Aviation Administration (FAA) has mandated that each individual engaged on the work within these areas must have a valid security identification badge, which will authorize their presence in the work area. In addition, they must escort un-badged personnel for temporary purposes such as delivering of material and other services authorized by the Project Manager. **Escorting of un-badged personnel is intended for short-term duration only and shall be limited to a period of 2 weeks.** To obtain such security identification badge, refer to the SIDA Badge Application Package within these documents.
  - 3. Provide for an on-site project supervisor at all times. A designated project supervisor shall be on the project site whenever any employee of the Contractor or any subcontractor or service contractor is required to be within the AOA, or materials are being delivered within the AOA. The Contractor will certify to the Owner that the person or persons so designated as on-site project supervisor have had a prior background investigation meeting FAA standards, and that they meet applicable requirements associated with the responsibility of controlling and maintaining security on the project site within the AOA. The Contractor's on-site project supervisor shall:



- 
- a. Serve as escort and be responsible for all employees of the contractor, subcontractor and providers of materials within the designated project area and insure that all such employees remain within the designated project area at all times. Under no circumstances shall the Contractor permit any personnel to leave the designated project area and enter other areas of the AOA without prior approval of the Owner.
  - b. Maintain radio contact at all times while in the AOA with the Security officer at the Contractor's access gate and with other entities such as the FAA control tower and/or the airport police as may be directed by the Owner.
  - c. Insure that all personnel associated with the project leave the AOA at the end of the work period, and that the access gate is properly secured at all times.
- B. Safety-Aircraft Movement Area: In addition to all other provisions of the contract and specifications pertaining to safety and security, the Contractor shall comply with the following procedures when required to work within Aircraft Movement Areas including prescribed minimum clearance distances from these areas:
1. Under no circumstances shall the Contractor permit any employees, subcontractors, providers of materials or services to enter Aircraft Movements Areas (including the minimum clearance distances from those areas) until all of the following conditions are met:
    - a. The Contractor, in accordance with the applicable provisions of the contract documents, has requested the Security officer and/or Owner's designated representative to close or otherwise secure the Aircraft Movement Area.
    - b. The Contractor's on-site supervisor is present and has received confirmation from either the Owner's designated representative and/or the FAA control tower that the area is closed and secured.
    - c. The Contactor's on-site supervisor has established a means of continual monitoring of radio communications with the FAA control tower and/or the designated representative of the Owner in the event the aircraft movement area must be cleared of all construction activity or for other safety or security reasons. **UNDER NO CIRCUMSTANCES IS THE CONTRACTOR TO HAVE ANY PEOPLE, EQUIPMENT OR MATERIAL WITHIN AN AIRCRAFT MOVEMENT AREA (INCLUDING MINIMUM CLEARANCE DISTANCES FROM THOSE AREAS) WITHOUT SOMEONE IN DIRECT RADIO CONTACT WITH THE FAA CONTROL TOWER AND/OR THE DESIGNATED REPRESENTATIVE OF THE OWNER.**
  2. Upon completion of the work within the Aircraft Movement Area, the Contractor will insure that all equipment, material and debris are cleared of the area and so advise the designated representative of the Owner who will inspect the area prior to

---

releasing the Contractor's work force and/or equipment. The Contractor will not allow his work force and/or equipment to leave the general project site until the Aircraft Movement Area has been inspected by the designated representative of the Owner and approved for opening.

3. Only certain designated representatives of the Owner are authorized to close, secure or open Aircraft Movement Areas. Therefore, the Contractor is not authorized to request or advise the FAA control tower in regard to closing or opening Aircraft Movement Areas except to confirm, as may be appropriate, that the applicable Aircraft Movement Area has in fact been closed or opened.

### 3.02 SECURITY BREACH

1. Failure of the Contractor to comply with these special security/safety provisions may result in the Owner prosecuting the Contractor under applicable federal, state, and local laws or regulations and/or the termination of this contract.

**END OF SECTION**

**EXHIBIT D**

**CMR'S PAYMENT AND PERFORMANCE BOND FORMS  
AND OTHER CONTRACT FORMS**

**NORFOLK AIRPORT AUTHORITY  
STANDARD LABOR AND MATERIAL PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_, the Contractor (“Principal”) whose principal place of business is located \_\_\_\_\_ and \_\_\_\_\_ (“Surety”) whose address for delivery of “Notices” is located at \_\_\_\_\_ are held and firmly bound unto the Norfolk International Airport Authority, the Owner (“Obligee”) in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,**

Principal has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for the ORF Garage D project which contract (the “Contract”) is by reference expressly made a part hereof;

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the Work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions:

The Principal and Surety, jointly and severally, hereby agree with Obligee as follows:

1. A “claimant” is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A “subcontractors” of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). “Labor” and “material” shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the Work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs, fees or expenses of any such suit.
3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond,

**NORFOLK AIRPORT AUTHORITY  
STANDARD LABOR AND MATERIAL PAYMENT BOND**

but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished shall not be subject to the time limitations state in this paragraph 3.

4. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless brought within one (1) year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof, is situated.
5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

**{SIGNATURES ON NEXT PAGE}**

**NORFOLK AIRPORT AUTHORITY  
STANDARD LABOR AND MATERIAL PAYMENT BOND**

Signed and sealed this \_\_\_\_ day of \_\_\_\_

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Contractor/Principal* (SEAL)  
By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
*Surety* (SEAL)  
By: \_\_\_\_\_  
*Attorney-in-Fact*  
Typed Name: \_\_\_\_\_

**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned notary public, do certify that \_\_\_\_\_, whose name is signed to the foregoing labor and material payment bond in the sum of \_\_\_\_\_ and dated \_\_\_\_\_ and which names the Norfolk International Airport Authority as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of \_\_\_\_\_, a \_\_\_\_\_ corporation which is the Surety in the foregoing bond, that he/she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as to the above Surety's act and deed.

He/she has further certified that his/her Power of Attorney has not been revoked.

[Complete if Power is recorded: Clerk's Office: \_\_\_\_\_;  
Deed Book/Page No. or Instrument No.: \_\_\_\_\_.]

Given under my hand this \_\_\_\_ day of \_\_\_\_ .

\_\_\_\_\_  
*Notary Public* (SEAL)

My name (*printed*) is: \_\_\_\_\_  
My registration number is: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
*Norfolk International Airport Authority*

\_\_\_\_\_  
Date

4835-4362-0880, v. 1

**NORFOLK AIRPORT AUTHORITY  
STANDARD PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_, the Contractor (“Principal”) whose principal place of business is located at \_\_\_\_\_ and \_\_\_\_\_ (“Surety”) whose address for delivery of “Notices” is located at \_\_\_\_\_ are held and firmly bound unto the Norfolk International Airport Authority, the Owner (“Obligee”) in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS** Principal has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for the ORF Garage D project which contract (the “Contract”) is by reference expressly made a part hereof;

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the Contract, or in the Work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other alterations, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alterations, extension, or forbearance being hereby waived.

No action shall be brought on this bond unless brought within one year after: (a) completion of the Contract and all Work thereunder, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty or guarantee if the action be for such. The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

**NORFOLK AIRPORT AUTHORITY  
STANDARD PERFORMANCE BOND**

Signed and sealed this \_\_\_\_ day of \_\_\_\_

\_\_\_\_\_  
*Contractor/Principal* (SEAL)

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

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

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

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Surety* (SEAL)

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

*Attorney-in-Fact*

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

**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned notary public, do certify that \_\_\_\_\_, whose name is signed to the foregoing performance bond in the sum of \_\_\_\_\_ and dated \_\_\_\_\_ and which names the Norfolk International Airport Authority as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of \_\_\_\_\_, a \_\_\_\_\_ corporation which is the Surety in the foregoing bond, that he/she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as to the above Surety's act and deed.

He/she has further certified that his/her Power of Attorney has not been revoked.

[Complete if Power is recorded: Clerk's Office: \_\_\_\_\_;

Deed Book/Page No. or Instrument No.: \_\_\_\_\_.]

Given under my hand this \_\_\_\_ day of \_\_\_\_ .

\_\_\_\_\_  
*Notary Public* (SEAL)

My name (*printed*) is: \_\_\_\_\_

My registration number is: \_\_\_\_\_

My commission expires: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
*Norfolk International Airport Authority*

\_\_\_\_\_  
Date



**NORFOLK AIRPORT AUTHORITY  
STANDARD PERFORMANCE BOND**

**TERMS AND CONDITIONS OF THE PERFORMANCE BOND**

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the prompt and faithful performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor promptly and faithfully performs the Construction Contract in strict conformity with the plans, specifications and conditions of the Construction Contract, the Surety and the Contractor shall have no obligations under this Bond.
3. In the event of the Contractor's Default, and subsequent notification to the Surety pursuant to Section 41 of the General Conditions of the Construction Contract, the Surety shall, within fourteen (14) days of receipt of such notice, contact the Owner in writing, and arrange a meeting with the Owner to discuss methods of completing the Construction Contract. See paragraph 4, below for the options to be discussed. If the Surety fails to arrange a meeting or fails to attend such meeting, the Surety shall be deemed to be in default on this Bond and the Owner may, at its sole discretion, take what measures it deems necessary to protect the Owner's interests, without further notice to the Surety, and the Owner shall be entitled to enforce any remedy available to the Owner under the Construction Contract or under Virginia law.
4. Within thirty (30) days after such meeting, during which time the Surety may investigate and otherwise analyze the project, and which period shall not toll any Construction Contract time periods nor operate as a waiver of any of the Owner's rights, the Surety shall, at its own expense, notify the Owner in writing that it is taking one of the following actions, which shall be acceptable to the Owner, at the Owner's sole discretion:
  - 4.1 By written takeover agreement with the Owner, the Surety itself shall undertake to perform and complete the Construction Contract, which it may do through its licensed agents or through licensed independent contractors. If the Owner, at its sole discretion, consents, the Contractor may serve as the Surety's independent contractor (however, due to conflicts with the Virginia Public Procurement Act, the Owner may not directly contract with an otherwise qualified independent contractor produced by the Surety); or
  - 4.2 The Surety may, if acceptable to the Owner and at the Owner's sole discretion, waive its right to perform and complete the Construction Contract, and with reasonable promptness under the circumstances:
    - 4.2.1 Pay to the Owner all amounts for which it may be liable to the Owner as surety on this Performance Bond, including the damages described in paragraph 6 below; or
    - 4.2.2 Deny liability, in whole or in part, and provide written notice thereof to the Owner, citing reasons therefore.
5. If, after the meeting described in paragraph 4, above, the Surety does not proceed with reasonable promptness with one of the options provided in subparagraphs 4.1 or 4.2 (including their subparts), above, the Owner may send additional written notice to the Surety demanding that the Surety perform its obligations under the Bond. If the Surety does not proceed to perform its obligations under the Bond within fifteen (15) days after receipt of said notice, the Surety shall be deemed to be in default on this Bond. Thereafter, the Owner shall be entitled to enforce any remedy unavailable to the Owner under the Bond, the Construction Contract or Virginia law. If the Surety proceeds as provided in Subparagraph 4.2, and the Surety and the Owner are unable

**NORFOLK AIRPORT AUTHORITY  
STANDARD PERFORMANCE BOND**

to agree as to the amount for which the Surety may be liable to the owner, or if the Surety has denied liability, in whole or in part, the Owner, without further notice, shall be entitled to enforce any remedy available to the Owner under the Bond, the Construction Contract or Virginia law. In such event, the owner may immediately proceed to complete the work in any manner authorized by law.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1 or 4.2.1., above, then the responsibilities of the Surety to the Owner shall not be greater or less than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater or less than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, plus the increased cost of any change orders under the Construction Contract, provided the Owner commits the balance of the Construction Contract Price to the prompt and faithful completion of the Construction Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions of failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

The Owner, at its sole discretion, may waive its claim to delay costs and/or liquidated damages.

7. The Surety shall not be liable to the owner for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner, its officers, agencies, administrators, successors or assigns.
8. The Surety hereby waives notice of any changes, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations. The Surety understands and agrees that the penal amount of the bond shall be increased or decreased by any changes to time and amount incorporated into any Change Orders.
9. Any proceeding by the Owner, legal or equitable, under this Bond may be instituted in any Virginia state court of competent jurisdiction, as permitted under Section 8 of the General Conditions of the Construction Contract and §§ 2.2-4337 and 4340, Va. Code or by the Contractor or Surety, as permitted under the Construction Contract or under Virginia law.
10. Notice to the Surety shall be mailed or delivered to the address shown on the Standard Performance Bond in the space for Surety address for delivery of Notices.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common bond when furnished to comply with statutory requirements.

**NORFOLK AIRPORT AUTHORITY  
STANDARD PERFORMANCE BOND**

12. DEFINITIONS

- 12.1 Balance of the Construction Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the first page of the Standard Performance Bond, including all Construction Contract Documents and duly executed modifications and change orders thereto.
  - 12.3 Contractor Default: Failure of the Contractor, as defined under Section 41 of the General Conditions to the Construction Contract, which has neither been remedied, as permitted under Section 41 at the Owner's sole discretion, nor expressly waived by the Owner, to perform or otherwise to comply with the terms of the Construction Contract.
13. Nothing in these General Conditions shall prevent a surety from becoming involved in the Construction Contract prior to termination, upon notice from the Owner of the Contractor's failure to promptly and faithfully perform the Construction Contract in strict conformity with the plans, specifications and conditions of the Construction Contract.

**EXHIBIT E**

**NOT USED**

**EXHIBIT F**  
**SCHEDULING SPECIFICATIONS**

## SCHEDULE OF THE WORK

- A. **General:** The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date established by the Contract and receive payment in accordance with Section 36 for the Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between the Contractor's planned early completion and the contracted Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time pursuant to Sections 38, 39, and 43, damages for delay, and all other matters between the Airport and the Contractor will be determined using the contractually-required Substantial Completion date, not an early Substantial Completion date planned by the Contractor.

A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than thirty (30) days after the Contract is signed by the Airport.

The Airport's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by the Airport, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve the Contractor from sole responsibility for completing the Work within the time allowed.

No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Airport. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete Project schedule accepted by the Airport. Nor shall subsequent progress payments be payable to the Contractor unless and until he maintains the monthly bar graphs or status reports required by Section 19(D) herein or unless and until he provides any recovery schedule pursuant to Section 19(E) herein.

Failure to provide a satisfactory preliminary or fully complete Project schedule within the time limits stated above shall be a breach of contract for which the Airport may terminate the Contract in the manner provided in Section 41 of these General Conditions.

The fully complete Project schedule for accomplishing the Work shall be of the type set forth in subparagraph (i) or (ii) below, as appropriate:

- i. For Contracts with a price of \$1,500,000 or less, a bar graph schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work. See (B) below.

- ii. For Contracts with a price over \$1,500,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor. See (C) below.

B. **Bar Graph Schedule:** Where a bar graph schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by A/E, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor.

The Contractor shall allow sufficient time in his schedule for the A/E to conduct whatever associated reviews or inspections as may be required under the A/E's contract with the Airport. If the A/E and the Contractor are unable to agree as to what constitutes sufficient time, the Airport shall determine the appropriate duration for such A/E activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

C. **CPM Schedule:** Where a CPM schedule is required, it shall be in the time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format.

The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other Submittals for approval, approval of shop drawings by A/E, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the Contractor. Failure to include any element of Work required for the performance of this Contract shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date and any interim deadlines established by the Contract.

The Contractor shall allow sufficient time in his schedule for the A/E to conduct whatever associated reviews or inspections as may be required under the A/E's contract with the Airport. If the A/E and the Contractor are unable to agree as to what constitutes sufficient time, the Airport shall determine the appropriate duration for such A/E activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the CPM schedule shall be submitted to the A/E and the Airport for review. The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time, whether "free float" or "total float" as defined in Section 1, shall not be considered for the exclusive use or benefit of either the Airport or the Contractor, but must be allocated in the best interest of completing the Work within the Time for Completion or the Contract Completion Date. Extensions to the Time for Completion or the Contract Completion Date, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change. On contracts with a price over \$5,000,000, the CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price. On contracts with a price over \$10,000,000, the CPM schedule shall also show the planned workforce (crew size and number of crews) and the major pieces of equipment required for each activity on the schedule. When acceptable to the Airport and A/E as to compliance with the requirements of this Section, but not as to logic, the schedule shall become the CPM schedule for the Project. Acceptance of the schedule by the Airport does not indicate agreement with nor responsibility for the proposed or actual duration of any activity shown on the accepted schedule.





**RFQ EXHIBIT B – NOT USED**



## **RFQ EXHIBIT C – SIDA BADGE APPLICATION PACKAGE**



## SIDA Badge Application Instructions and Check List

Below are the procedures and information needed to obtain a Security Identification Display Area (SIDA) badge from the Norfolk Airport Authority. Attached are the corresponding forms for this process.

- **FILL OUT AN APPLICATION.** Attached to this form is a complete 3-page application that must be filled out in its entirety by each individual employee requesting a SIDA badge. **This application must be typed or it will not be accepted.**
  - Proper identification must be submitted with your application. A list of acceptable documents is included in this package.
  - If you were born outside of the United States, additional information is required. In addition to the documentation provided on the "List of Acceptable Documents for Obtaining a SIDA badge" sheet, you must provide a Permanent Resident card, U.S. Passport, or Naturalization Papers as proof of your citizenship.
- **OBTAIN NOTIFICATION LETTERS.** Your company is required to provide the Norfolk Airport Authority with three notifications:
  - **Verification of Hiring-** Your company must obtain and submit a letter from the company that hired you, expressing their intent to use your company for the service you will provided. This letter shall briefly describe the location and type of work your company is expected to perform within the airport and must be on the hiring company's letterhead. (See attached page for example).
  - **Designated Signatory of Authority-** Your company must provide a letter on company letterhead designating at least one person of seniority as a Signatory Authority. This person(s) will be deemed the point of contact for your company and will be required to fill out Section 3 of the application for each individual who will be requesting a SIDA badge. (See attached page for example).
    - Each person(s) designated as an Authorized Signatory must fill out the Designated Signatory Authority Authorization and Information Sheet. This instructional form provides the required training to be the Designated Signatory.
    - Your company is required to immediately provide and up-to-date Designated Signatory of Authority letter to Ms. Shelia Ward, Vice President & Chief Operations Officer for the Norfolk Airport Authority, should there be any changes required.
    - The process of designating a Signatory Authority is much the same as applying for a SIDA badge. The applicant must also undergo SIDA training. For this reason, many companies choose to either obtain a SIDA badge for the Signatory Authority or they choose to designate a senior badged employee of their company as the Designated Signatory Authority.
  - **Authorized Personnel-** Your company must provide a letter on company letterhead listing each person your company is requesting to receive a badge. Please also include next to the employee's name, if escort authorization is needed. Please keep in mind that there must be an operational need for escort privileges, and only 25% of your badged employees can have escort authorization. (Please see page for an example)
    - **There is a \$80.00 fee for each employee requesting a SIDA badge.**
    - If your employer provides an approved Criminal History Record Check, the fee is only **\$60.00** for each employee requesting a SIDA badge.

**PAYMENT-** The payment and the Authorized Personnel letter must be submitted to the Norfolk Airport Authority Finance Department for processing. The Finance Department will stamp the Authorized Personnel letter "PAID" and return a copy to you.

**PLEASE MAKE ALL CHECKS PAYABLE TO: NORFOLK AIRPORT AUTHORITY**



## SIDA Badge Application Instructions and Check List, cont'd

- **TURN IN YOUR PAPERWORK.** Once all of the above steps have been completed, you must submit your paperwork, along with proper identification, in order to be fingerprinted and for approval to receive training. See the FILL OUT AN APPLICATION section on page 1 for details on proper identification.
  - **Depending on what stage of the process you are in, you will turn in your paperwork to one of the following:**
    - **If you are the Designated Signatory making the initial request for access for your company**, you must complete the package, to include all letters, signatory form, and SIDA application for the signatory, in addition to having the appropriate certificate of insurance. Once this has been completed the designated signatory (no employees) must make an appointment to meet with the Norfolk Airport Authority Vice President & Chief Operations Officer, Ms. Shelia Ward. Copy and paste the following link into your Internet Browser to schedule the appointment. <https://tinyurl.com/ORFSignatoryConsult>
    - Please call 857-3351 or email [sward@norfolkairport.com](mailto:sward@norfolkairport.com) if you have problems scheduling the appointment. The Chief Operations Officer will determine what access level your company needs to have in order to complete your work assignment. Once you have been assigned an access level from the Chief Operations Officer, you will submit all of your signed paperwork to the Norfolk Airport Police Department.
    - **If your company has already been assigned an access level from the Chief Operations Officer and you are an employee listed on the Authorized Personnel and** just need to be issued a badge, you simply submit your paperwork to the Norfolk Airport SIDA Office.

The Norfolk Airport Authority is required to submit a fingerprint-based Criminal History Check on all personnel seeking a SIDA badge. Fingerprints will be taken in the Norfolk Airport Police Department Administration Office between the hours of 8:30am and 2:30pm, Monday through Friday, excluding holidays. It is recommended that you call 757-857-3448 to check the availability before coming for fingerprinting.

- Applicants that have been notified that they have successfully completed the background check and are qualified for a SIDA badge **must obtain their badge within 30 days** from the date of notification.
- All persons receiving a non-restricted SIDA badge will be required to attend driver training. This entails reviewing literature provided by the Norfolk Airport Authority as well as viewing a driver training video. Once you have finished viewing the material, you will be tested. SIDA badge holders with either "Movement Area" or "Non-Movement Area" driver access will be required to complete annual recurrent driver training as directed by the Norfolk Airport Authority.
- Vehicle Insurance Requirement- Unescorted vehicles operated in the Air Operations Area must have a minimum of \$1,000,000 automobile coverage and \$10,000,000 excess third party liability coverage.
- Invalid Airport ID (SIDA)- Persons not issued a valid Airport ID (SIDA) media, who have a legitimate authorized need to enter the restricted areas, may only do so while under positive escort by a person who has a valid Airport SIDA badge with "ESCORT" privileges. A maximum of 5 persons can be assigned to each escort. Positive Escort requires the person being escorted to stay within sight and sound of the approved escort at all times. Should the escorted individuals engage in any unauthorized activity, the escorted person shall be removed from the secured area immediately. If at any time an escort is in danger, or if a security violation is observed, Airport Police is to be notified by phone at 757-857-3344 or radio immediately.

**ONCE YOUR WORK HAS BEEN COMPLETED AND YOU NO LONGER NEED ACCESS, YOU MUST RETURN YOUR BADGE TO THE NORFOLK AIRPORT POLICE DEPARTMENT OR THE SIDA OFFICE.**

**If you have questions, please contact the SIDA office at 757-857-3448 or Vice President & Chief Operations Officer, Ms. Shelia Ward, by phone at 757-857-3351 or by email at [sward@norfolkairport.com](mailto:sward@norfolkairport.com).**



# NORFOLK AIRPORT AUTHORITY

## Signatory Sample Letter Templates

### Template 1: Sample Letter to be Completed by Hiring Company

Verification of Hiring Letter Template

*Company Letterhead with Logo*

*Date*

Shelia D. Ward  
Vice President & Chief Operations Officer  
2200 Norview Avenue  
Norfolk, Virginia 23518

RE: Designation of Subcontractors for *(Name of Subcontractor Company and Project Title)*

Dr. Ward,

The following subcontractor will assist in the *(Name of Project and Project Details)* and has been provided the SIDA Application Package:

*(List each subcontractor company name, address, city/state/zip, and contact number as illustrated below):*

Contractor 1: Steel Electric (Electrician)  
9000 Cow Street  
Norfolk, Virginia 23518  
(757) 333-3333

Contractor 2: Airport Paint (Painting)  
7000 Highway  
Virginia Beach, Virginia 23462  
(757) 6543241

I estimate *(the number of workers)* workers from Sterling Electric and *(the number of workers)* workers from Airport Paint will be required to complete this project.

\*Requested badge expiration date: *(Date and Year)*

\*Driver authorization is requested for the **Apron** or **Airfield** or **Both** *(if applicable)*

Sincerely,

*Authorized Printed Name and Signature*

## Template 2: Sample Letter by Company Requesting a Badge:

Designated Signatory Authority Template

*Company Letterhead with Logo*

*Date*

Shelia D. Ward  
Vice President & Chief Operations Officer  
2200 Norview Avenue  
Norfolk, Virginia 23518

RE: *(Company Name)* Authorized Designee list to keep on file at the Airport

Dr. Ward,

The following employees are authorized to approve all *(Company Name)* employee applications to the Norfolk International Airport (NIA).

*(List each employee and provide signature as illustrated below):*

---

Signature  
Joe Smith  
Electrician Supervisor

---

Signature  
Earl Jones  
District Safety Manager

Sincerely,

*Authorized Printed Name and Signature*

## Template 3: Sample Letter by Company Requesting a Badge

Authorized Personnel Template

*Company Letterhead with Logo*

*Date*

Shelia D. Ward  
Vice President & Chief Operations Officer  
2200 Norview Avenue  
Norfolk, Virginia 23518

RE: *(Company Name)* Authorized Employee List

Dr. Ward,

The following *(Company Name)* employee(s) will require badge(s) to complete work for *(Name of Project)*:

*(List each employee as illustrated below):*

1. Smith, Joe A.
2. Jones, Earl P.
3. Weathers, Charles B.

*(Name and Title of Qualified Driver Trainer)* will be the qualified Driver Trainer (if applicable)

Sincerely,

*Authorized Printed Name and Signature*

## Designated Signatory Authorization And Information Sheet

Name of Business: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Business Description/Type: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Roles and Responsibilities: (Please initial next to each statement)

- \_\_\_\_\_ 1. Signatory Authorities will be the designated points of contact between the Norfolk Airport and their respective employer for issues pertaining to SIDA regulations and badging issuances.
- \_\_\_\_\_ 2. Persons with Signatory Authority designations are required to complete the SIDA training provided by the Airport and to undergo a Security Threat Assessment and Criminal History Records Check prior to obtaining such designation.
- \_\_\_\_\_ 3. Signatory Authorities must certify that all applicants' normal job responsibilities require the level of SIDA access that is being requested.
- \_\_\_\_\_ 4. As a Signatory Authority, you may request access authorization and certify the need of others for access. You shall also provide signatures on an original form required by the Airport Police. In the issuance of an identification badge, the Airport relies heavily on the representations and certifications made by the applicants and their supervisors and managers. However, the Airport retains the ultimate authority, right and responsibility to determine an applicant's legitimate need for an identification badge.
- \_\_\_\_\_ 5. The responsibility for an individual issued an identification badge rests exclusively with the employer whose representative's signature appears on the identification card application form.
- \_\_\_\_\_ 6. The Airport application for unescorted access authority must be completed by the applicant prior to fingerprinting. The application contains a list of disqualifying offenses with a statement signed by the applicant stating that he/she does not have any disqualifying offenses. The applicant also must sign a statement that imposes a continuing obligation to disclose to the airport operator within 24 hours if he/she is arrested for any disqualifying offense while he/she has unescorted access authority. The employer is also obligated to notify the airport of such arrest or conviction of its employees who possess unescorted access authority.
- \_\_\_\_\_ 7. Prior to fingerprinting, the Airport must verify the identity of the applicant through two forms of identification. Valid forms of identification can be referenced from the I-9 List of Acceptable Documents. To view this list, visit [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf) and scroll down to the last page titled "List of Acceptable Documents". At least one of the two forms of ID must have been issued by a government authority and at least one form must have a photo. If the applicant possesses 1 form of identification specifically listed under column A of the I-9 list, then that one ID will suffice (examples include passport,



Permanent Residency Card, etc.).

- \_\_\_\_\_ 8. The Airport requires that each unescorted person with Airport-authorized unescorted access to SIDAs to display at all times in those areas Airport-issued (or approved) photo identification on their outermost garment above the waist level.
- \_\_\_\_\_ 9. All persons with unescorted access to the Airport SIDAs are charged with the continuing duty of challenging any person detected in the SIDA who is not displaying an Airport issued (or approved) identification.
- \_\_\_\_\_ 10. The Airport requires all air carriers, tenants, vendors and contractors to provide immediate notification to the airport when any of the following occurs:
- An individual’s access authority has been revoked or limited
  - An individual’s access medium (i.e. ID/access badge) has been lost or stolen
  - A current identification media holder no longer meets the requirements of employment eligibility as identified in the “Form I-9, Employment Eligibility Verification”. (for example, if a visa authorizing employment has expired)
  - The air carrier, tenant, vendor or contractor becomes aware that the access control system or a component of the system has been compromised or threatened through any means.
  - Any authorized user who observes any failure of an access control mechanism to function as designed and intended.
- \_\_\_\_\_ 11. Upon the termination or loss of the SIDA badge, it is the employer’s responsibility to notify the Norfolk Airport Police Department (757-857-3344) immediately, but not more than 8 hours, after the termination or loss. SIDA badges that are recovered must be returned to the Norfolk Airport Police SIDA office as soon as possible.
- \_\_\_\_\_ 12. If an applicant is disqualified from the badging process, that person cannot be escorted into any SIDA area by anyone, regardless of the authority of the escorting personnel.
- \_\_\_\_\_ 13. Applicants must obtain their SIDA badge within 30 business days of notification by the Norfolk Airport Authority that they have successfully completed the background check and they are qualified to receive a SIDA badge.
- \_\_\_\_\_ 14. If you have questions, please contact the Norfolk Airport Vice President & Chief Operations Officer, Ms. Shelia Ward at (757) 857-3351 or by email at [sward@norfolkairport.com](mailto:sward@norfolkairport.com).

By signing below, I acknowledge that I have read, understand and agree to the roles and responsibilities of being the Authorized Signatory for the above named company.

Name (Print): \_\_\_\_\_

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

## LISTS OF ACCEPTABLE DOCUMENTS

### All documents must be UNEXPIRED

Employees may present one selection from List A  
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Authorization	
OR	AND		
1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address  2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address  3. School ID card with a photograph  4. Voter's registration card  5. U.S. Military card or draft record  6. Military dependent's ID card  7. U.S. Coast Guard Merchant Mariner Card  8. Native American tribal document  9. Driver's license issued by a Canadian government authority  <b>For persons under age 18 who are unable to present a document listed above:</b>  10. School record or report card  11. Clinic, doctor, or hospital record  12. Day-care or nursery school record	1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION  2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)  3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal  4. Native American tribal document  5. U.S. Citizen ID Card (Form I-197)  6. Identification Card for Use of Resident Citizen in the United States (Form I-179)  7. Employment authorization document issued by the Department of Homeland Security	
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)			
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa			
4. Employment Authorization Document that contains a photograph (Form I-766)			
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.			
			6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

Examples of many of these documents appear in Part 13 of the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.







**Application for  
Security Identification Display Area badge**

<b>SECTION I – APPLICANT INFORMATION - to be filled out by Applicant</b>						<b>Date Application Filled Out:</b>	
Name (Last, First, MI)				Other names used (In the last 10 years)			
Social Security Number		Place of Birth (State and Country)		Citizenship Country		Alien Registration Number	Passport Country and Number
Home Address (Street)			City		State	Zip Code	Home or Cell Telephone Number
Non-Immigrant Visa Number			Drivers License Number		Drivers License Issuing State		Expiration Date
Height	Weight	Gender (M or F)	Race	Hair Color	Eye Color	Date of Birth (MMDDYYYY)	
Employer				Job Title		Hire Date with Present Employer	

**SECTION II – CRIMINAL CHECKS - to be filled out by Applicant**

The Transportation Security Administration (TSA) requires that all individuals who request unescorted access to the Airport's Security Identification Display Area (SIDA) provide the following information:

<b>During the previous ten years, have you been convicted or found not guilty by reason of insanity of the following listed crimes?</b>	<b>YES</b>	<b>NO</b>
1. Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306. -----	<input type="checkbox"/>	<input type="checkbox"/>
2. Interference with air navigation; 49 U.S.C. 46308.-----	<input type="checkbox"/>	<input type="checkbox"/>
3. Improper transportation of a hazardous material; 49 U.S.C. 46312.-----	<input type="checkbox"/>	<input type="checkbox"/>
4. Aircraft piracy; 49 U.S.C. 46502.-----	<input type="checkbox"/>	<input type="checkbox"/>
5. Interference with flight crew member or flight attendants; 49 U.S.C. 46504.-----	<input type="checkbox"/>	<input type="checkbox"/>
6. Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.-----	<input type="checkbox"/>	<input type="checkbox"/>
7. Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.-----	<input type="checkbox"/>	<input type="checkbox"/>
8. Conveying false information and threats; 49 U.S.C. 46507.-----	<input type="checkbox"/>	<input type="checkbox"/>
9. Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).-----	<input type="checkbox"/>	<input type="checkbox"/>
10. Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.-----	<input type="checkbox"/>	<input type="checkbox"/>
11. Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.-----	<input type="checkbox"/>	<input type="checkbox"/>
12. Destruction of an aircraft or aircraft facility; 18 U.S.C. 32. -----	<input type="checkbox"/>	<input type="checkbox"/>
13. Murder.-----	<input type="checkbox"/>	<input type="checkbox"/>
14. Assault with intent to murder. -----	<input type="checkbox"/>	<input type="checkbox"/>
15. Espionage.-----	<input type="checkbox"/>	<input type="checkbox"/>
16. Sedition.-----	<input type="checkbox"/>	<input type="checkbox"/>
17. Kidnapping or hostage taking.-----	<input type="checkbox"/>	<input type="checkbox"/>
18. Treason.-----	<input type="checkbox"/>	<input type="checkbox"/>
19. Rape or aggravated sexual abuse.-----	<input type="checkbox"/>	<input type="checkbox"/>
20. Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.-----	<input type="checkbox"/>	<input type="checkbox"/>
21. Extortion.-----	<input type="checkbox"/>	<input type="checkbox"/>
22. Armed or felony unarmed robbery. -----	<input type="checkbox"/>	<input type="checkbox"/>
23. Distribution of, or intent to distribute, a controlled substance.-----	<input type="checkbox"/>	<input type="checkbox"/>
24. Felony arson.-----	<input type="checkbox"/>	<input type="checkbox"/>
25. Felony involving a threat.-----	<input type="checkbox"/>	<input type="checkbox"/>
26. Felony involving – (i) Willful destruction of property; (ii) Importation or manufacture of a controlled substance; (iii) Burglary (iv) Theft; (v) Dishonesty, fraud, or misrepresentation; (vi) Possession or distribution of stolen property; (vii) Aggravated assault; (viii) Bribery; or (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.-----	<input type="checkbox"/>	<input type="checkbox"/>
27. Violence at international airports; 18 U.S.C. 37.-----	<input type="checkbox"/>	<input type="checkbox"/>
28. Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.-----	<input type="checkbox"/>	<input type="checkbox"/>

**I understand that I am required to disclose within 24 hours to the Norfolk Airport Authority any arrests of criminal offenses listed in Section II above while I have a S.I.D.A. badge.**

**Initials \_\_\_\_\_**

**I understand that any unanswered questions and any false or misleading information on this application may be cause for this application to be disapproved or for any permit or SIDA badge issued as a result to be revoked.**

**Initials \_\_\_\_\_**

<b>SECTION III – EMPLOYER AUTHORIZED CERTIFICATION OFFICIAL - To be filled out by employer</b>				
Employer's Name			Telephone Number	
Address (street)				
City/ State / Zip Code		Driving Access Required YES <input type="checkbox"/> NO <input type="checkbox"/>	Unescorted Access Required YES <input type="checkbox"/> NO <input type="checkbox"/>	
<p>I certify that upon the employee's termination or loss of the SIDA badge or AOA key, it is my company's responsibility to notify the Airport Police Department immediately, but not more than 8 hours, after the termination or loss at 757-857-3344.</p> <p>I certify that the employee on this application is aware that he or she is not authorized to drive in the AOA unless authorization has been granted, as indicated above. Authorized drivers will be required to complete annual driving on the AOA training, as required by 14 CFR 139.</p> <p>I certify that the employee acknowledges their security responsibilities under 49 CFR 1540.105(a)</p> <p>Employer's Signature _____</p>				
<b>AUTHORIZED CERTIFICATION OFFICIAL - To be filled out by employer</b>				
Print Name:	Signature:	Date:	Employer's Name / Tenant Sponsor:	
<b>SECTION IV – APPLICANT SECURITY RESPONSIBILITY AGREEMENT - To be filled out by applicant</b>				
<ol style="list-style-type: none"> <li>1. I will not allow anyone else to use my SIDA badge or AOA key.</li> <li>2. I will wear the SIDA badge on my outer most garment, above my waist and below my neck at all times when in a restricted or sterile area.</li> <li>3. I will challenge any individual who fails to display a SIDA badge.</li> <li>4. I will ensure proper closing and locking of any AOA door or gate, and report any malfunctions to the Airport Police Department</li> <li>5. I will not allow anyone to follow me, or my vehicle through any AOA door or gate.</li> <li>6. I will report the theft or loss of my SIDA badge or AOA key immediately to the Airport Police Department</li> <li>7. I will report immediately any security violation I witness to the Airport Police Department.</li> </ol> <p>I have read and understand that failure to comply with any of the above security procedures will result in the revocation of my SIDA badge or AOA key and possible banning from the restricted area of the Airport. Initials _____</p> <p>I acknowledge that I have read and fully understand and will abide by the Security Responsibility Agreement on this application. Initials _____</p> <p>The information I have provided is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement can be punished by fine or imprisonment or both (See Section 1001 of Title 18 of the United States Code).</p>				
<b>SCREENING NOTICE: Any employee holding a credential granting access to a Security Identification Display Area may be screened at any time while gaining access to, working in, or leaving a Security Identification Display Area.</b>				
Applicant Signature (Print and Sign)			Date:	
<b>SECTION V – DESIGNATED SECURITY TRAINER</b> <i>To be filled out by trainer.</i>		Airport Code (3 digit) ORF	Airport Category (X, I, II, III or IV) I	
I certify that the above named applicant has successfully completed SIDA training and Driving on the AOA training (if applicable) in accordance with a TSA-approved curriculum in the Airport Security Program				
Designated Security Trainer (Print name and Title)		Signature		Date:
<b>SECTION VI – IDENTIFICATION FOR IDENTITY AND ELIGIBILITY – To be completed by Police Department</b>				
ONLY One form is needed if it is from LIST A of Acceptable Documents: Document Verified:				
Two forms of Identification required if not from list A of acceptable documents: <input type="checkbox"/> Driver's License # state) _____				
<input type="checkbox"/> Military ID <input type="checkbox"/> Birth Certificate <input type="checkbox"/> Work Permit <input type="checkbox"/> INS Card <input type="checkbox"/> State issued ID # (State)				
<input type="checkbox"/> Other (Be very Specific to include form number)				
<b>SECTION VII – ISSUANCE OF MEDIA (Check Applicable Box of type issued) – To be filled out by Police Department</b>				
<input type="checkbox"/> Permanent Non-restricted	<input type="checkbox"/> General Aviation	<input type="checkbox"/> Parking Pass	<input type="checkbox"/> NAA Ambassador	
<input type="checkbox"/> Permanent Restricted	<input type="checkbox"/> Visitor Restricted	<input type="checkbox"/> Non-restricted Contractor	<input type="checkbox"/> Taxi Operating Permit	
Badge Issued By: (Print Name and Title)		Signature:		
<b>SECTION VIII – POLICE DEPARTMENT USE ONLY – To be completed Police Department</b>				
SIDA Badge #	Access Level	Process Date (not issued)	Issue Date (MMDDYYYY)	Revoked Date (MMDDYYYY)



NORFOLK AIRPORT AUTHORITY

Application for

Security Identification Display Area badge

– Privacy Act of 1974 5 U.S.C. 552a(e)(3)

Privacy Act Notice

**Authority:** 6 U.S.C. § 1140, 46 U.S.C. § 70105; 49 U.S.C. §§ 106, 114, 5103a, 40103(b)(3), 40113, 44903, 44935-44936, 44939, and 46105; the Implementing Recommendations of the 9/11 Commission Act of 2007, § 1520 (121 Stat. 444, Public Law 110-53, August 3, 2007); FAA Reauthorization Act of 2018, §1934(c) (132 Stat. 3186, Public Law 115-254, Oct 5, 2018), and Executive Order 9397, as amended.

**Purpose:** The Department of Homeland Security (DHS) will use the biographic information to conduct a security threat assessment. Your fingerprints and associated information will be provided to the Federal Bureau of Investigation (FBI) for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems including civil, criminal, and latent fingerprint repositories. The FBI may retain your fingerprints and associated information in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI. DHS will also transmit your fingerprints for enrollment into US-VISIT Automated Biometrics Identification System (IDENT). DHS may provide your name and SSN to the Social Security Administration (SSA) to compare that information against SSA records to ensure the validity of the information.

**Routine Uses:** In addition to those disclosures generally permitted under 5 U.S.C. 522a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 522a(b)(3) including with third parties during the course of a security threat assessment, employment investigation, or adjudication of a waiver or appeal request to the extent necessary to obtain information pertinent to the assessment, investigation, or adjudication of your application or in accordance with the routine uses identified in the TSA system of records notice (SORN) DHS/TSA 002, Transportation Security Threat Assessment System. For as long as your fingerprints and associated information are retained in NGI, your information may be disclosed pursuant to your consent or without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses.

**Disclosure:** Pursuant to § 1934(c) of the FAA Reauthorization Act of 2018, TSA is required to collect your SSN on applications for Secure Identification Area (SIDA) credentials. All SIDA applicants with a place of birth and citizenship indicated as United States will be required to submit social security numbers. For SIDA applications, failure to provide this information may result in denial of a credential. For other aviation credentials, although furnishing your SSN is voluntary, if you do not provide the information requested, DHS may be unable to complete your security threat assessment.

**I authorize the Social Security Administration to release my Social Security Number and Full name to the Transportation Security Administration, Office of Intelligence and Analysis (OIA), Attention: Aviation Programs (TSA-10)/Aviation Worker Program, 601 South 12th Street, Arlington, VA 22202** Initial \_\_\_\_\_

**I am the individual to whom the information applies and want this information released to verify that My SSN is correct. I know that if I make any representation that I know is false to obtain information from Social Security records, I could be punished by a**

**fine or imprisonment or both.**

Signature: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

SSN and Full Name: \_\_\_\_\_

*The information below applies to both the SIDA application and the Privacy Act Notice*

*(Complete Section I if signature is a mark)*

*( All applicants must complete section II)*

<b>SECTION I</b>	<b>Date:</b>		<b>WITNESS TO MARK</b>		<b>Date:</b>
Applicant Signature or Mark					
<b>SECTION II</b>	<b>Yes</b>	<b>No</b>	<b>Name of person assisting with application:</b>	<b>Date:</b>	
Did anyone assist you in completing this application?					



**RFQ EXHIBIT D – WRITTEN DETERMINATION REGARDING USE OF CMR  
PROCUREMENT METHOD**



## **Executive Summary: Norfolk Airport Authority Consolidated Rental Car Facility Capital Project Delivery Options Report**

### ***Overview***

Norfolk Airport Authority (“NAA”) is planning a Consolidated Rental Car Operations (“ConRAC”) facility at Norfolk International Airport (“ORF”). Anchor Enterprises, LLC, the consulting firm engaged by NAA to provide capital construction program and project management advisory services, has prepared a Consolidated Rental Car Facility Capital Project Delivery Report (the “Report”) with a technical evaluation and summary of potential project delivery methods for the ConRAC. The analysis encompasses an in-depth evaluation of different project delivery methods, such as design-bid-build, design-build low bid, design-build best value, design-build-operate-maintain (“DBOM”), construction management at risk (“CMAR”), and public-private partnerships (“P3”). The Report examines financial considerations, legal frameworks for procurement and project delivery methods, case studies of recent P3 ConRAC projects, industry benchmarks, and recommended commercial terms.

Following a comprehensive assessment, the Report recommends the CMAR method for the ConRAC project. This recommendation stems from the method's ability to provide an owner with a high degree of control over design decisions, flexibility during project development and implementation, as well as offering greater budget and schedule certainty at each phase of the project. The main objective of the ConRAC facility is to improve the efficiency of rental car operations, customer service, and overall public parking. To achieve this within feasible financial parameters, the project's goals of quality design and construction, schedule, and cost must be considered and are best accounted for under a CMAR approach.

### ***Project Delivery Methods***

- ***Design-Bid-Build***

Design-bid-build is the default method of construction procurement in Virginia's Public Procurement Act. It involves hiring a design team to complete the design before procuring a contractor through competitive bidding. This method gives the owner full control of the design but may result in hiring a less qualified albeit cheaper contractor. Change management is crucial in this method, and construction cannot begin until the design is fully completed. While this method is straightforward, issues can arise with bidder qualifications and the higher risk of contractors seeking changes to supplement a low bid.

- ***Design-Build***

Design-Build is an integrated project delivery method involving a singular entity delivering the full design and construction scope for the project. The Design-Build can be awarded based solely on price, prioritizing the most competitive initial cost. This method shares the advantages of engaging the contractor early and transferring design risk but may result in selecting a less experienced contractor. Additionally, the contracted price may include contingencies for unknown issues and the contractor may cut corners on design, resulting in reduced quality of construction.

The Design-Build contract can also be awarded based on a combination of design, price, technical aspects, and other criteria, i.e., a “best value” award. It also involves engaging the contractor early and transferring design risk, while contracting a fixed price for design and construction. However, the price may be inflated due to contingencies for unknown issues, and there is still a risk of the contractor cutting corners on design, albeit potentially reduced with a more experienced contractor.

Design-Build contracts can also include the operations and maintenance scope in a Design-Build-Operate and Maintain agreement often referred to as a DBOM project. These contracts generally result in a fixed price for design, construction, and long-term operations. The main advantage of DBOM is that it encourages thoughtful design and construction of a quality product, as the contractor is also responsible for operations and maintenance. This approach entails a long-term commitment for the owner, which carries inherent risks, such as competitive takeovers, despite the inclusion of termination clauses.

- ***Construction Management At Risk***

The CMAR project delivery method involves the separate procurement of a design team that develops the design to 100% completion and subsequent procurement of a contractor. Under Virginia law, the CMAR contract must be entered into no later than the 30% completion of the design (the “schematic phase”), ensuring early engagement for constructability review and cost estimates, aiming to avoid issues during construction. In a standard CMAR procurement, the CMAR submits qualifications, technical and price proposals based on scored evaluation criteria customized to the project and stakeholder needs. The CMAR method allows for greater flexibility in phasing and staging a project and is recommended where the scope is not clearly defined at the time of the award. It provides more control over material pricing volatility, but the construction cost remains an estimate until later in the design process (generally 60-90% completion). Effective cost control under this method requires competitive procurement of all subtrades and supplies.

- ***Public-Private-Partnerships***

P3s are an alternative project delivery method, generally for government entities with limited bonding capacity. In a typical P3, a government entity contracts with a private entity to design, build, finance, operate, and maintain a specific project. While P3s have gained traction in the airport sector, few completed projects are available for comprehensive analysis.

The primary advantage of a P3 model is third-party financing, which allows the public sector to afford projects that it might not otherwise be capable of financing. However, the financing structure comes at a higher cost. Challenges of the P3 model include the delegation of control to the private sector, allocation of risk, considerable time added to the project delivery schedule, lack of competition, control of revenue adjustments, revenue sharing, and complexity in dealing with multiple stakeholders.

### ***Complex Project Consideration***

Virginia law permits Design-Build and CMAR approaches for “Complex Projects” regardless of project costs. Section 2.2-4379 of the Virginia Code provides seven factors that bear upon whether project can be designated as “Complex.” “Complex Projects” are those that include one or more of the following as a significant component: 1) difficult site location, 2) unique equipment, 3) specialized building systems, 4) multifaceted program, 5) accelerated schedule, 6) historic designation, or 7) intricate phasing or some other aspect that makes competitive sealed bidding not practical.

The ConRAC project meets the criteria for a “Complex Project.” It is situated in the heart of the airport grounds, in close proximity to the operating terminal, with restricted access and security considerations. The rental car operations incorporate a fueling system and specialized car wash facilities that will necessitate approvals from permitting authorities. The project involves a mix of underground, horizontal, and vertical work that requires careful coordination. In order to avoid traffic and airport parking congesting, NAA will need to engage a highly skilled contractor to expedite the construction process. Moreover, the ConRAC project is part of an approximately \$850 million terminal redevelopment project and will require extensive coordination with other projects and contractors beyond the capabilities of a traditional design-bid-build approach. The ConRAC project incorporates several of the statutory factors, making it a permissible project for the use of either a Design-Build or CMAR project delivery approach.

### ***Assessment and Recommendation***

As set forth in the Report, the design-bid-build approach is shown to be the least advantageous method, while the three design-build methods are better for achieving schedule, cost control, and risk management goals. The DBOM model is particularly suited for delivering a quality facility for operations. The P3 delivery method, while offering similar advantages as design build, entails the most upfront planning, longer procurement and contracting times, and requires extensive evaluation and certifications to the Commonwealth. Use of P3 is much harder to justify if the governmental entity can finance the project with tax exempt bonds or other monies, which generally come at a much lower cost to capital, and such use will not limit the ability to carry out other necessary projects. While the design-build methods and the P3 approach have clear benefits over the tradition approach, the Report’s objective evaluation of finance, scheduling, cost, quality, and risk considerations demonstrate that the CMAR method is the most advantageous for the NAA ConRAC facility. While operations and maintenance will need to be contracted separately, CMAR allows for early contractor involvement for design and constructability reviews, gives owner more control over design decisions, and provides more budget and schedule certainty.

The Report recommends the use of the CMAR method for a multitude of reasons. The CMAR method is widely used in the aviation-sector for large-scale, infrastructure projects. NAA is using the CMAR method for its FIS and Concourse A projects. Additionally, staff intends to recommend the use of the CMAR method for the new Departures Terminal. There are notable benefits to employing the same delivery method across multiple projects, such as utilizing the same procurement documents and contract. This approach is particularly appealing to the construction management industry as it streamlines the ability of CMARs to pursue both projects.

**RFQ EXHIBIT E – SCORING MATRIX (Expand as needed for all Offerors)**

	<b>Organization, Experience &amp; Capacity 15</b>	<b>Proposed Team 20</b>	<b>Project Approach 20</b>	<b>Approach to Scheduling &amp; Cost Control 10</b>	<b>Contract Terms 5</b>	<b>Price 30</b>	<b>Total</b>
<b>Offeror A</b>							
Member 1							
Member 2							
Member 3							
Member 4							
Member 5							
Total							
<b>Offeror B</b>							
Member 1							
Member 2							
Member 3							
Member 4							
Member 5							
Total							
<b>Offeror C</b>							
Member 1							
Member 2							
Member 3							
Member 4							
Member 5							
Total							



## **RFQ EXHIBIT F – PRECONSTRUCTION SERVICES FEE AND BILLABLE RATE PROPOSAL**



**RFQ EXHIBIT F  
Pre-Construction Services Fee Proposal**

**PROJECT MANAGEMENT STAFF PRECONSTRUCTION SERVICES - 9-MONTH DURATION**

STAFF POSITION TITLE	NAME OF STAFF MEMBER, company and work location	Hourly Base Rate \$	Labor Burden and specified jobsite expenses	Total Burdened Billable Rate	MONTH 1		MONTH 2		MONTH 3		MONTH 4		MONTH 5		MONTH 6		MONTH 7		MONTH 8		MONTH 9		Total Man-Hours	Total Cost
					Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost		
<i>Add rows as needed Between Rows 25 and 26 f Rows are added, copy formuals and formatting from row above Only Enter Values in Yellow Highlighted Cells</i>																								
Project Director				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
Preconstruction Manager				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
Project Scheduler				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
Construction PM				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
Superintendent				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
				\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
<b>Sub-Total Pre-Construction Phase Services Fee Proposal</b>						\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -

(1) Include all subconsultants serving in preconstruction positions

**PROJECT MANAGEMENT REIMBURSABLE COSTS**

Offeror shall provide a description and list out all other project management cost assumed to be incurred as part of the preconstruction services in order to present the Owner with a total estimated pre-construction cost to include, but not be limited to, cost associated with work provided by third party vendors, travel and other reimbursable costs pursuant to the contract

DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	QUANTITY	UNIT PRICE	TOTAL
<i>Add rows as needed Between Rows 45 and 46 +A6 Only Enter Values in Yellow Highlighted Cells</i>					
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
<b>Sub-Total Pre-Construction Phase Services Reimbursables</b>					\$ -

**Pre-Construction Services Summary**

Cost Element	Amount	Notes
Staff Cost	\$ -	Do not enter - Amount auto filled from the table above
NTE Reimbursables	\$ -	Do not enter - Amount auto filled from the table above
CM Fee For Preconstruction Phase	\$ -	Enter LUMP SUM Amount
<b>Total Pre-Construction Services</b>	\$ -	<b>INSERT THIS TOTAL VALUE ON EXHIBIT G</b>

### RFQ EXHIBIT G – PRICE PROPOSAL FORM

<b>A</b>	PRECONSTRUCTION SERVICES FEE total from Exhibit F	\$ _____	
<b>B</b>	INSURANCE RATE FOR PRECONSTRUCTION PHASE	\$ _____	assuming the minimum limits of liability set forth in Exhibit B
<b>C</b>	TOTAL PRECONSTRUCTION PHASE (NTE)	\$ _____	SUM OF LINES A+B
<b>D</b>	CONSTRUCTION MANAGER AT RISK FEE, (this rate is used, all inclusive, for the entire project, excludes pre-construction costs above)	_____ %	Does not apply to Pre-Construction Services
<b>E</b>	100% PERFORMANCE AND PAYMENT BOND FEE	_____ %	Does not apply to Pre-Construction Services
<b>F</b>	INSURANCE RATE for Construction Phase	_____ %	assuming the minimum limits of liability set forth in Exhibit B

**CCIP OPTIONS**

The Airport Authority is also seeking priced options for the following three CCIP coverage scenarios:

1. CCIP with \$25,000,000 in Commercial General Liability coverage (meeting all of the requirements set forth in Article 12 of the Agreement – Exhibit A).
2. CCIP with \$50,000,000 in Commercial General Liability coverage (meeting all of the requirements set forth in Article 12 of the Agreement – Exhibit A).

These CCIP pricing scenarios shall not be considered in the final award criteria, but following award, the Airport Authority reserves the right to elect the coverage option it considers to be in its best interest.

To propose a CCIP, Offerors shall provide the information below for all three scenarios. Proposing a CCIP is optional.

**CCIP Scenario No. 1:**

CCIP with \$25,000,000 in Commercial General Liability coverage (meeting all of the requirements set forth in Article 12 of the Agreement – Exhibit A).

Check the box for each additional coverage provided under your CCIP in this scenario, if any.

- Business Automobile Liability
- Professional Liability
- Worker’s Compensation/Employer’s Liability
- Pollution Liability
- UAV

Provide the cost of your CCIP in this scenario: \$ \_\_\_\_\_ **(a)**

Provide the total cost for any required coverages that will not be provided under your CCIP:

Coverage Type:	Cost:
	\$
	\$
	\$
	\$
<b>Subtotal:</b>	\$ <b>(b)</b>

Offeror’s **total costs under this CCIP Scenario (a+b)** = \$ \_\_\_\_\_

Each coverage provided must meet all of the requirements for such coverage, as set forth in Article 12 of the Agreement – Exhibit A.



**CCIP Scenario No. 2:**

CCIP with \$50,000,000 in Commercial General Liability coverage (meeting all of the requirements set forth in Article 12 of the Agreement – Exhibit A).

Check the box for each additional coverage provided under your CCIP in this scenario, if any.

- Business Automobile Liability
- Professional Liability
- Worker’s Compensation/Employer’s Liability
- Pollution Liability
- UAV

Provide the cost of your CCIP in this scenario: \$ \_\_\_\_\_ **(a)**

Provide the total cost for any required coverages that will not be provided under your CCIP:

Coverage Type:	Cost:
	\$
	\$
	\$
	\$
	\$
<b>Subtotal:</b>	\$ <b>(b)</b>

Offeror’s **total costs under this CCIP Scenario (a+b)** = \$ \_\_\_\_\_

Each coverage provided must meet all of the requirements for such coverage, as set forth in Article 12 of the Agreement – Exhibit A.



The undersigned signatory of the Offeror hereby certifies that he/she represents the Offeror submitting this Fee Proposal Form, has authority to sign on behalf of the Offeror, understands the scope of work, has read the procurement documents in their entirety, and that the information submitted has been carefully reviewed and is submitted as correct and final. If selected, the Offeror further certifies and agrees to furnish any or all services in accordance with the terms and conditions contained herein and in the CMAR Contract; to willfully enter into negotiations; and to faithfully execute an agreement with the County upon successful negotiations.

The individual signing this Fee Proposal Form certifies that he/she is a legal agent of the Offeror, authorized to submit on behalf of the Offeror, and is legally responsible for the decisions as to the supporting documentation provided.

NAME OF OFFEROR: \_\_\_\_\_

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## **RFQ EXHIBIT H – CONCEPT DRAWINGS**

**Exhibit H is provided for informational purposes only. Design scope, scale, layout and functionality are subject to change.**

# EXHIBIT H CONCEPTUAL DESIGN PACKAGE

CONSOLIDATED RENTAL  
CAR FACILITY

NORFOLK  
INTERNATIONAL  
AIRPORT  
2200 Norview Ave, Norfolk,  
VA 23518



CONRAC - INDEX OF DRAWINGS	
Sheet #	Sheet Name
GENERAL	
G000	COVER SHEET / INDEX OF DRAWINGS
ARCHITECTURAL DEMOLITION	
AD101	DEMOLITION - CONRAC SITE PLAN
ARCHITECTURAL	
A001	CONRAC FACILITY AXON VIEW
A002	CONRAC FACILITY AXON VIEW
A101	NEW CONSTRUCTION - CONRAC SITE PLAN
A201	CONRAC LEVEL 1 - FLOOR PLAN

CONRAC - INDEX OF DRAWINGS	
Sheet #	Sheet Name
A202	CONRAC LEVEL 2 - FLOOR PLAN
A203	CONRAC LEVEL 3 - FLOOR PLAN
A204	CONRAC LEVEL 4 - FLOOR PLAN
A210	QTA AND SERVICE YARD PLAN
A301	EXTERIOR ELEVATIONS
A302	EXTERIOR ELEVATIONS
A303	EXTERIOR ELEVATIONS
A320	BUILDING SECTIONS
A350	WALL SECTIONS













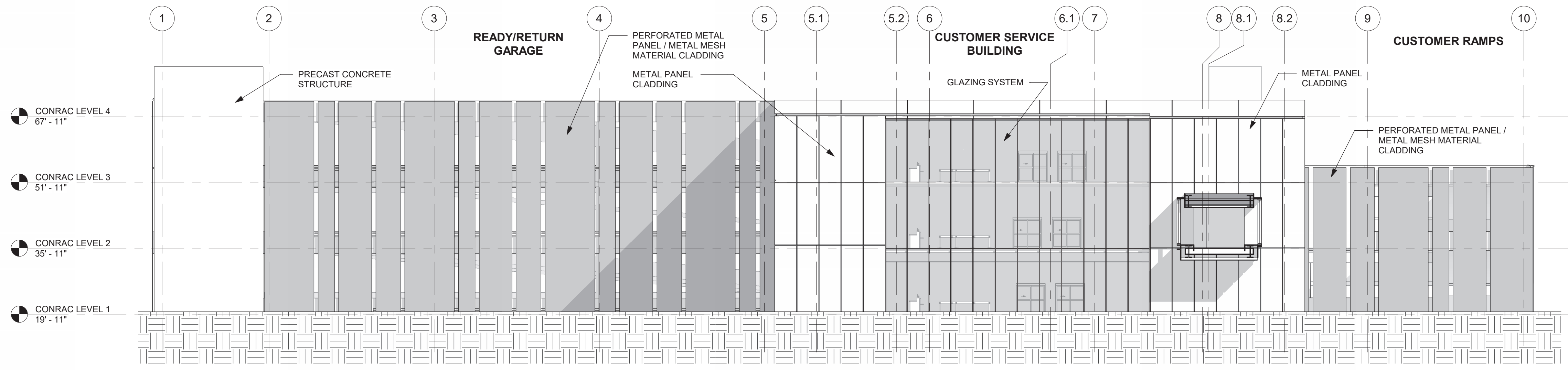




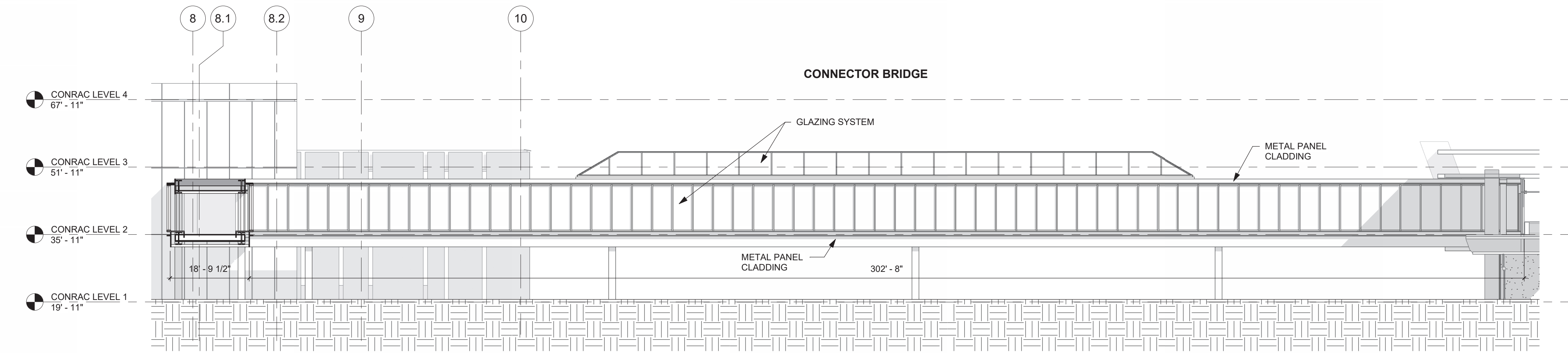




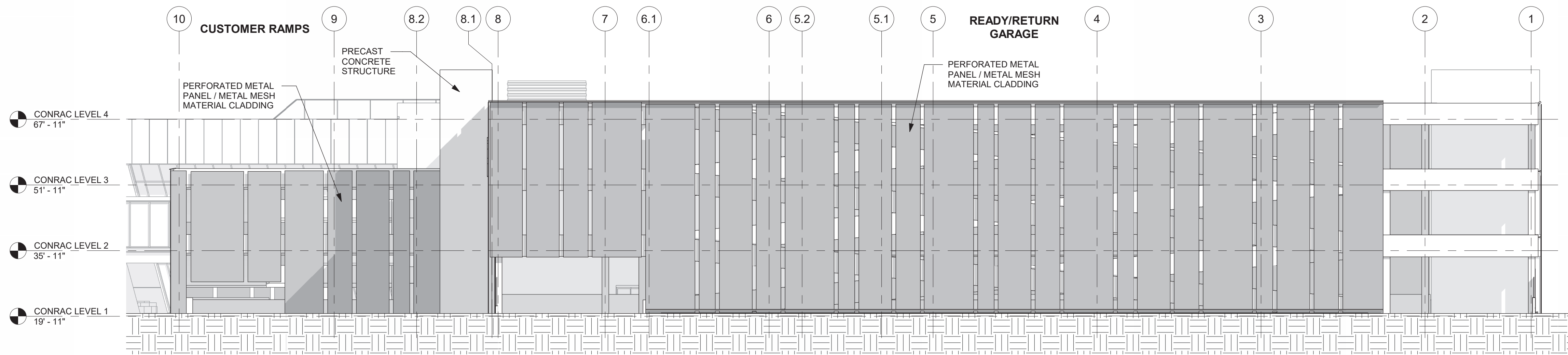




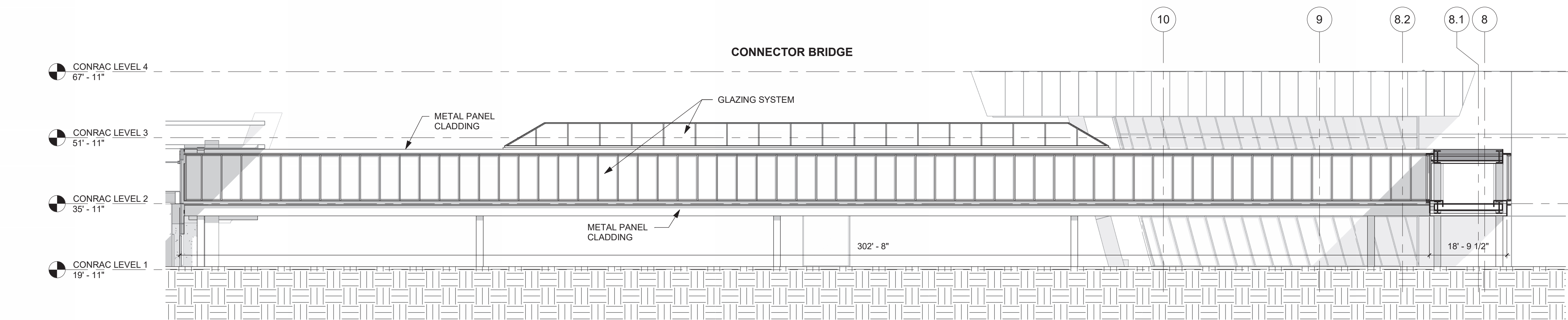
**1 NORTH ELEVATION - READY/RETURN GARAGE, CSB AND CUSTOMER RAMPS**  
 1/16" = 1'-0"



**2 NORTH ELEVATION - CONNECTOR BRIDGE**  
 1/16" = 1'-0"



**3 SOUTH ELEVATION - READY/RETURN GARAGE**  
 1/16" = 1'-0"



**4 SOUTH ELEVATION - CONNECTOR BRIDGE**  
 1/16" = 1'-0"

**NORTH ELEVATION - READY/RETURN GARAGE, CSB, AND CUSTOMER RAMPS**

1. PRECAST CONCRETE STRUCTURE - 1,563 SF
2. PERFORATED METAL PANEL / METAL MESH CLADDING - 8,316 SF
3. METAL PANEL CLADDING - 3,337 SF
4. GLAZING SYSTEM - 3,006 SF

**NORTH ELEVATION - CONNECTOR BRIDGE**

1. METAL PANEL CLADDING - 1,473 SF
2. GLAZING SYSTEM - 4,275 SF

**SOUTH ELEVATION - READY/RETURN GARAGE**

1. PRECAST CONCRETE STRUCTURE - 704 SF
2. PERFORATED METAL PANEL / METAL MESH CLADDING - 13,349 SF

**SOUTH ELEVATION - CONNECTOR BRIDGE**

1. METAL PANEL CLADDING - 1,477 SF
2. GLAZING SYSTEM - 4,289 SF



**Gresham Smith**

GreshamSmith.com  
 919 E Main Street  
 Suite 1200  
 Richmond, VA 23219  
 804.788.0710



CONSOLIDATED RENTAL CAR FACILITY

NORFOLK INTERNATIONAL AIRPORT  
 2200 Norview Ave, Norfolk, VA 23518

**NOT FOR CONSTRUCTION**

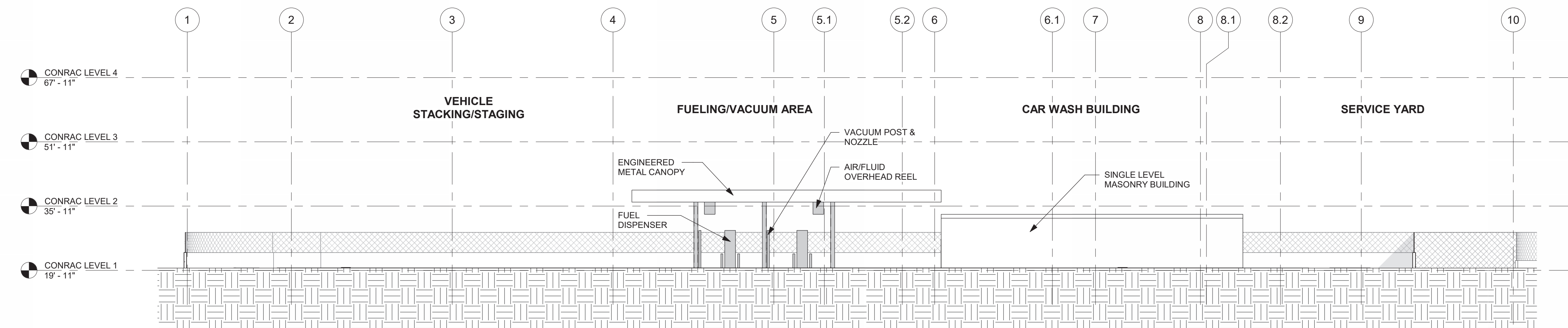
Revision		
No.	Date	Description

EXTERIOR ELEVATIONS

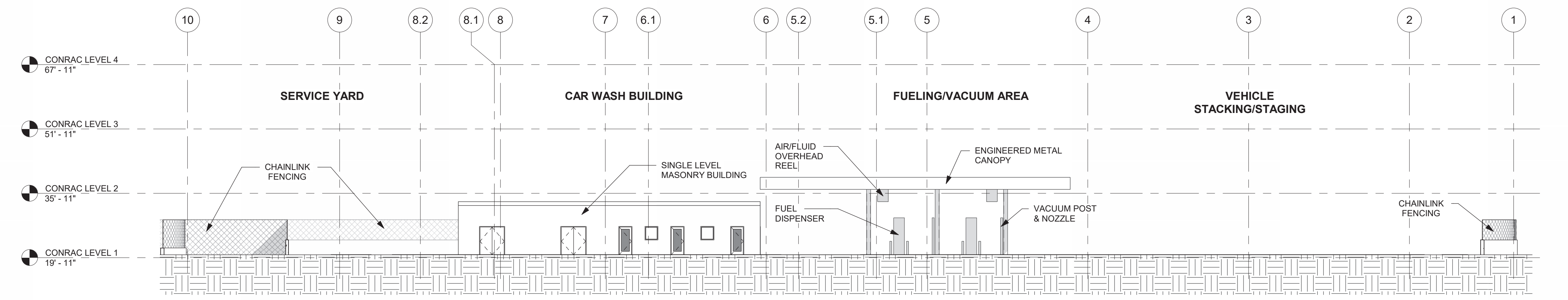
**A302**

Project Number  
 Issue Date

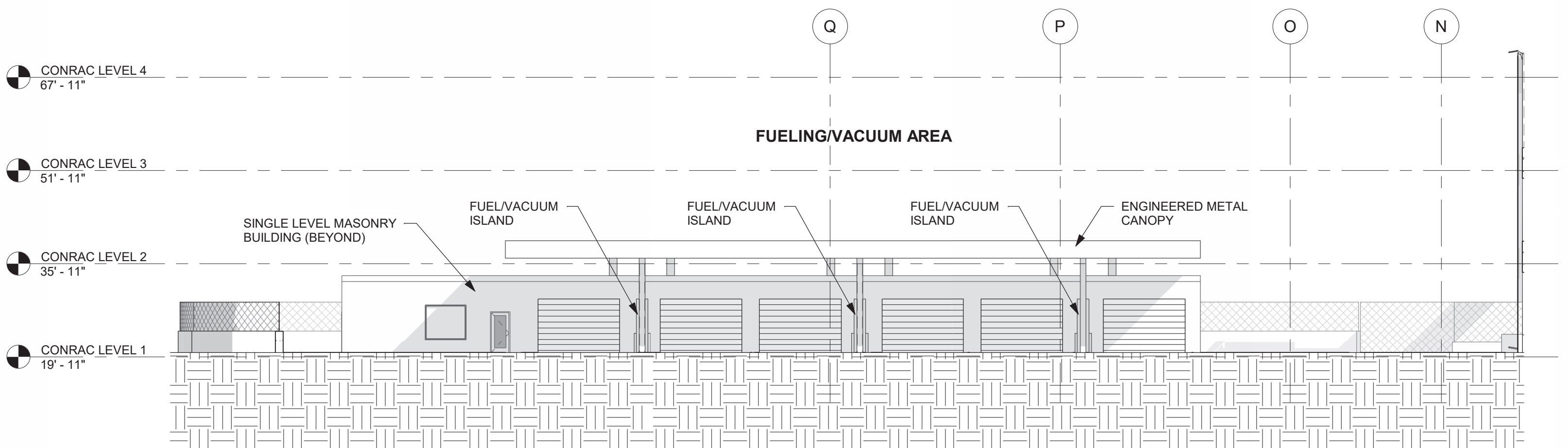
Drawn By: Author  
 Checked By: Checker  
 Approved By: Approver



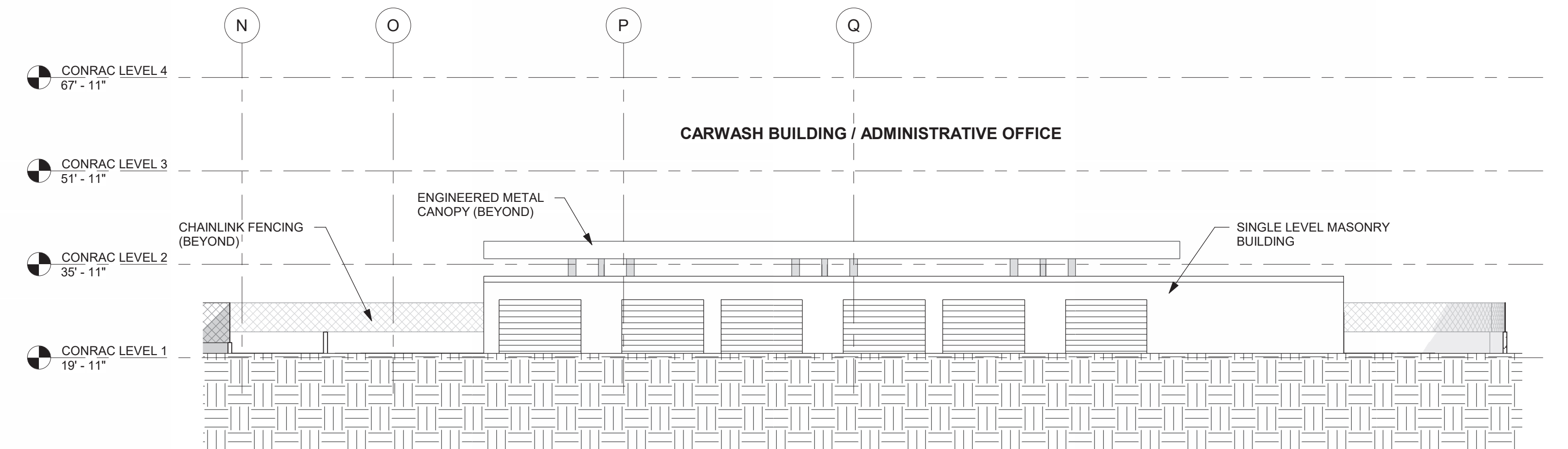
**3 NORTH ELEVATION - QTA**  
 1/16" = 1'-0"



**1 SOUTH ELEVATION - QTA**  
 1/16" = 1'-0"



**2 EAST ELEVATION - QTA**  
 1/16" = 1'-0"



**4 WEST ELEVATION - QTA**  
 1/16" = 1'-0"

**NORTH ELEVATION - QTA**

1. MASONRY - 1,040 SF

**SOUTH ELEVATION - QTA**

1. MASONRY - 878 SF

**EAST ELEVATION**

1. MASONRY - 1,139 SF

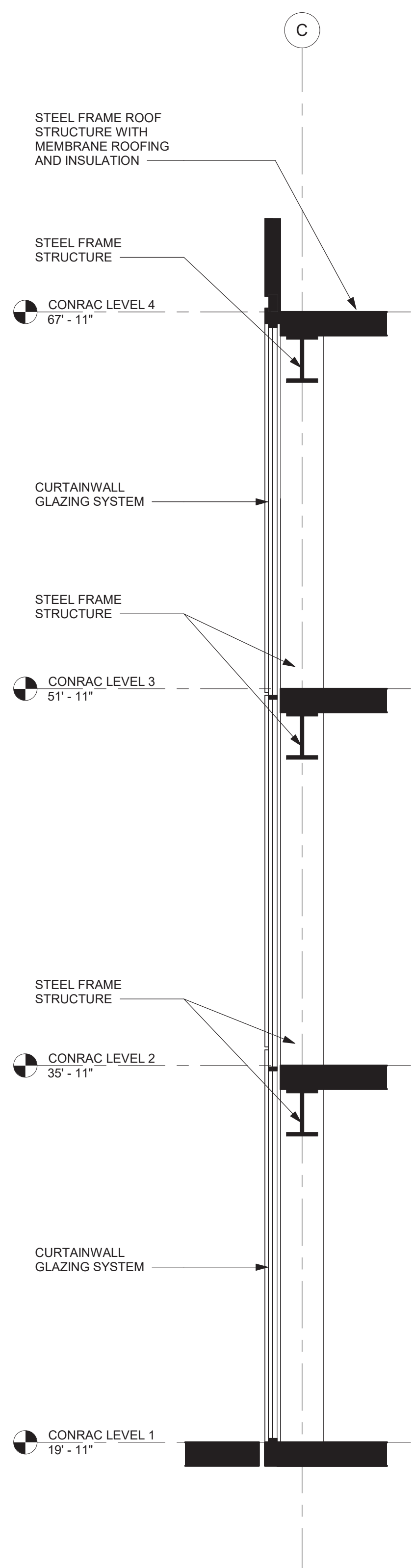
**WEST ELEVATION**

1. MASONRY - 1,213 SF

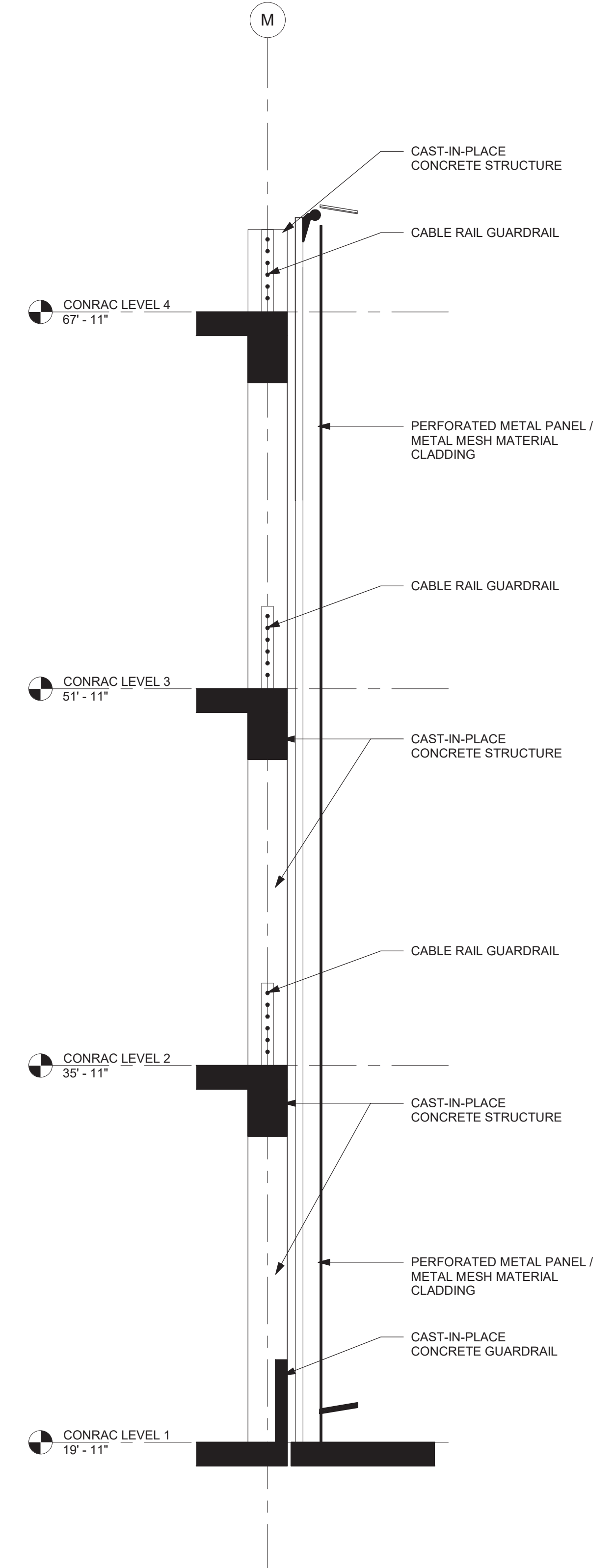




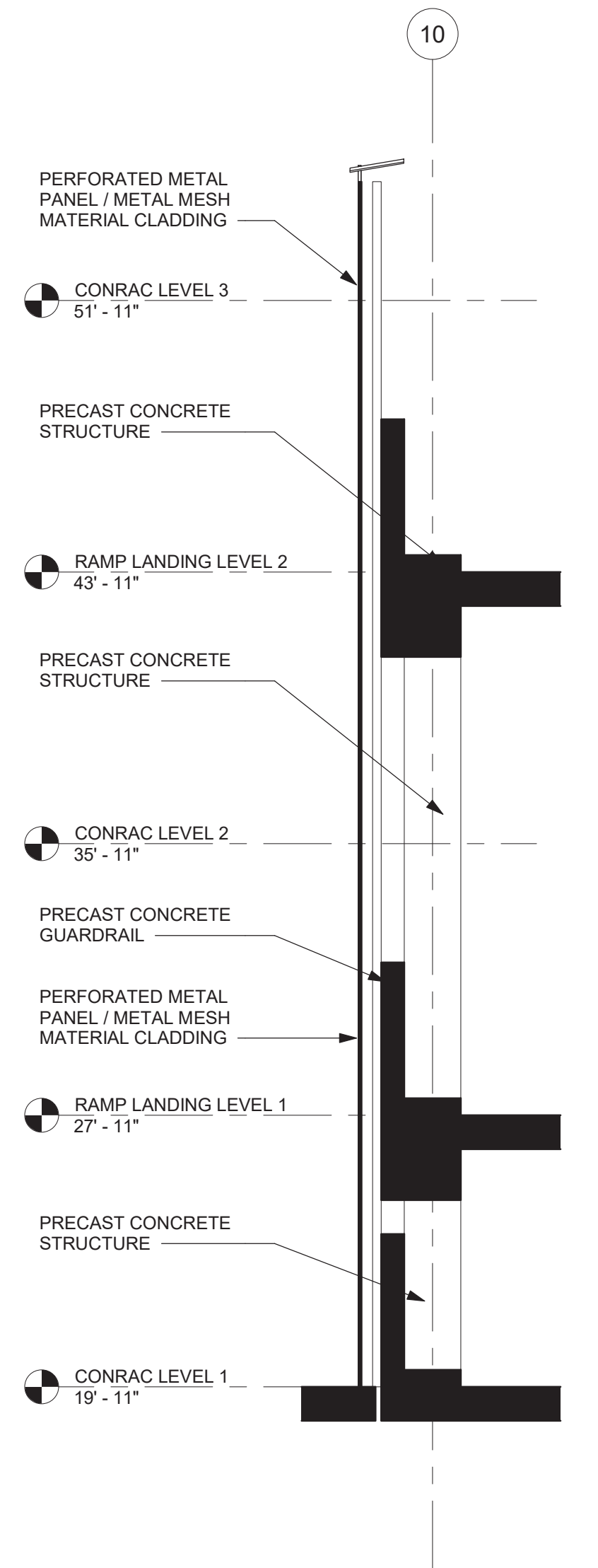
Drawn By: Author  
 Checked By: Checker  
 Approved By: Approver



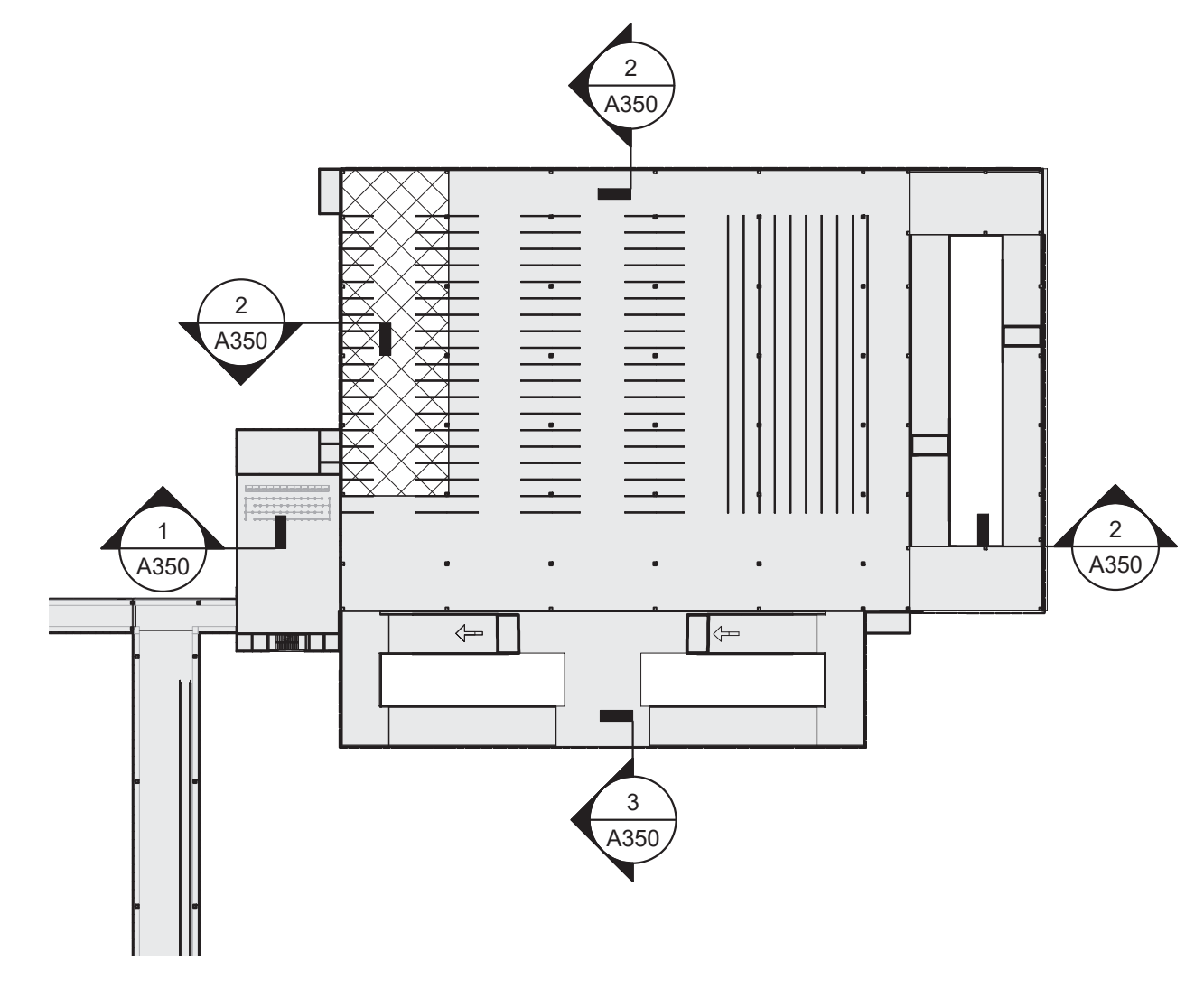
1 WALL SECTION - CSB  
 1/4" = 1'-0"



2 WALL SECTION - READY/RETURN GARAGE  
 1/4" = 1'-0"



3 WALL SECTION - CUSTOMER RAMP  
 1/4" = 1'-0"



KEYPLAN - WALL SECTIONS

**NOT FOR CONSTRUCTION**

Revision		
No.	Date	Description