



**REQUEST FOR QUALIFICATIONS FOR
CONSTRUCTION MANAGER AT RISK
FOR CONSTRUCTION OF PORTION OF DE-ICING FLUID FORCE MAIN
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT
(FEDERALLY FUNDED)
CONTROL NO. S09-058**

Issue Date: April 29, 2009

Pre-Response Meeting: May 6, 2009 at 1:00 PM Eastern Time
Detroit Metropolitan Wayne County Airport
L. C. Smith Building - Mezzanine Level
Airport Administration - Conference Room 1
*Detroit, Michigan 48242

Question Deadline: May 11, 2009 at 2:00 PM Eastern Time
Email Questions To: purchasing.questions@wcaa.us
Reference in Question: Control No. S09-058

Response Deadline: May 28, 2009 at 3:00 PM Eastern Time
Detroit Metropolitan Wayne County Airport
Wayne County Airport Authority - Purchasing Unit
L. C. Smith Building - Lower Level of Concourse A
*Detroit, Michigan 48242

Purchasing Contact: Sherita Calloway, CPPB, Senior Solicitation Manager
Phone: (734) 247-7900, Fax: (734) 955-5648

**Note: Detroit, Michigan 48242 is the mailing address of Detroit Metropolitan Wayne County Airport. The Detroit Metropolitan Wayne County Airport is physically located within the boundaries of the City of Romulus, Michigan.*

DESCRIPTION: Responses are being solicited for the purpose of contracting for a Construction Manager at Risk (CMR) to perform a full range of pre-construction, construction and post-construction management services for approximately five miles of a de-icing fluid force main system. The services include, but are not limited to: collaboration with the Wayne County Airport Authority (WCAA or Airport Authority) engineer of record (Designer) and the Airport Authority, design reviews, constructability reviews, estimating, scheduling, bid packaging, bidding, construction management and administration, commissioning, clean-up, and turn over to the Airport Authority. The contract will include a Guaranteed Maximum Price (GMP) which will be negotiated after evaluation of the responses to this Request for Qualifications (RFQ). The contract will commence upon issuance of the Airport Authority's Notice to Proceed and terminate upon the Airport Authority's final payment for all required services.

See page 2 of this RFQ for information on obtaining this RFQ and documentation related to this RFQ.

Responses must be time stamped by the Purchasing Unit by the exact date and time indicated above. Late responses will not be accepted.

This Request for Qualifications (RFQ) may be viewed or obtained as follows:

1. To download this RFQ, all attachments (except Attachment C), and all addenda, access the Wayne County Airport Authority website at: www.metroairport.com (select Business Opportunities on the left side of the page) then select Michigan Intergovernmental Trade Network (MITN) link. This RFQ may also be viewed and downloaded directly from the Michigan Intergovernmental Trade Network (MITN) website at: <http://www.govbids.com/scripts/mitn/public/home1.asp>
2. To view a copy of the RFQ, all attachments, and all addenda, visit the following location:

Detroit Metropolitan Wayne County Airport
Purchasing Unit
L. C. Smith Building, Lower Level of Concourse A
Detroit, MI 48242
(734) 247-7900
3. To view or download the document listed in Attachment C – Wayne County Airport Authority Ethics Ordinance, access the following weblink: <http://www.metroairport.com/pdf/ethics.pdf>
4. The following information is available for viewing:
 - a. 50% Design Plans for proposed Force Main
 - b. As-built Plans for portion of Force Main previously constructed

To view these documents, please schedule an appointment by emailing: projects@wcaa.us.
The documents will be made available at:

Planning, Design and Construction Division
Detroit Metropolitan Wayne County Airport
L. C. Smith Building, Mezzanine Level
Detroit, MI 48242

Important Note: It is the responsibility of the Respondents to view, obtain or download all addenda issued by the Airport Authority for this RFQ.

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SECTION 1 – INSTRUCTIONS

- 1) **PRE-RESPONSE INFORMATION AND QUESTIONS:** Each response that is timely received will be evaluated on its merit and completeness of all requested information. In preparing responses, Respondents are advised to rely only upon the contents of this RFQ and accompanying documents and any written clarifications or addenda issued by the Airport Authority. If a Respondent finds a discrepancy, error, or omission in the RFQ package, or requires any written addendum thereto, the Respondent is requested to notify the Purchasing contact noted on the cover page of this RFQ, so that written clarification may be sent to all prospective Respondents. **THE AIRPORT AUTHORITY IS NOT RESPONSIBLE FOR ANY ORAL INSTRUCTIONS.** All questions must be submitted in writing to the Purchasing contact before the Pre-Response Question Deadline indicated on the cover page of this document. No contact with other Airport Authority employees, officers or Board members regarding this document is permitted. All answers will be issued in the form of a written addendum.
- 2) **PRE-RESPONSE MEETING:** A pre-response meeting concerning this RFQ will be held. The date, time and location are indicated on the cover page of this RFQ. Staff will be available at this meeting to present information about this RFQ. Attendance at the Pre-Response Meeting is **STRONGLY ENCOURAGED** for businesses that intend to submit a response and that will be the signatory on a Contract with the Airport Authority that results from this RFQ. It is anticipated that this pre Pre-Response Meeting may be up to two hours in length.
- 3) **RFQ MODIFICATIONS:** Clarifications, modifications, or amendments may be made to this RFQ at the discretion of the Airport Authority. Any changes made will be made through issuance of an addendum. All addenda issued by the Airport Authority will be posted as noted on the cover page of this document. All interested parties are instructed to view the listed website regularly for any issued addenda. Copies of any issued addenda may also be obtained by visiting the Purchasing Unit, Wayne County Airport Authority, Detroit Metropolitan Wayne County Airport, L.C. Smith Building – Lower Level of Concourse A, Detroit Michigan 48242 during business hours, 8:00 AM to 4:30 PM, Monday through Friday. It is the responsibility of the Respondent to obtain the available addenda and acknowledge any issued addenda on the Response Form. If any changes are made to this RFQ by any party other than the Airport Authority, the original document in the Airport Authority's files takes precedence.
- 4) **RESPONSE SUBMISSION:** To be considered, the indicated number of copies of the response must be prepared in the manner and detail specified in this RFQ.
 - a) Responses must be submitted to the Purchasing Unit, Wayne County Airport Authority, Detroit Metropolitan Wayne County Airport, L. C. Smith Building, Lower Level of Concourse A, Detroit, Michigan 48242, by the date and time indicated as the Response Deadline on the cover page. The Purchasing Unit time stamp will determine the official receipt time. It is each Respondent's responsibility to insure that its response is time stamped by the Purchasing Unit by the Response Deadline. This responsibility rests entirely with the Respondent, regardless of delays resulting from postal handling or for any other reasons. Responses will be accepted at any time during the normal course of business only, said hours being 8:00 a.m. to 4:30 p.m. eastern time, Monday through Friday, holidays excepted.
 - b) Responses received after the above Response Deadline will not be accepted and will be returned to the Respondent unopened. The Purchasing Unit time stamp shall be the official time.
 - c) The opening and reading of a response does not constitute the Airport Authority's acceptance of the Respondent as a responsive and responsible Respondent.
 - d) Responses must be enclosed in a sealed envelope, box or package, and clearly marked on the outside with the following: RFQ Title, Control Number, Deadline and Respondent's name, address, phone, fax and contact name.

- e) Submission of a response establishes a conclusive presumption that the Respondent is thoroughly familiar with the Request for Qualifications (RFQ) and terms of the Form of Agreement, and that the Respondent understands and agrees to abide by all of the stipulations and requirements contained therein.
 - f) All notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person(s) signing the response.
 - g) Responses sent by facsimile, or other electronic means will not be considered.
 - h) All costs incurred in the preparation and presentation of the response is the Respondent's sole responsibility; no pre-response costs will be reimbursed to any Respondent.
 - i) All documentation submitted with the response will become the property of the Airport Authority.
- 5) **DUPLICATE RESPONSES:** No more than one (1) response from any Respondent, including its subsidiaries, affiliated companies and franchises will be considered by the Airport Authority. In the event multiple responses are submitted in violation of this provision, the Airport Authority will have the right to determine which response will be considered, or at its sole option, reject all such multiple responses.
- 6) **WITHDRAWAL:** Responses may only be withdrawn by written notice prior to the date and time set for the Response Deadline. No response may be withdrawn after the Response Deadline.
- 7) **REJECTION:** The Airport Authority reserves the right to reject any or all responses, or to accept or reject any response in part, and to waive any minor informality or irregularity in responses received if it is determined by the Chief Executive Officer or his designee that the best interest of the Airport Authority will be served by doing so. If all responses are rejected by the Airport Authority, notice will be posted on the Airport Authority's web site, as noted on the Cover page of this document. No response will be considered from any person or entity in arrears or in default to the Airport Authority on any contract, debt, or other obligation, or if the Respondent is debarred by the Airport Authority from consideration for a contract award, or if the Respondent has committed a violation of the Airport Authority's Ethics Ordinance which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.
- 8) **PROCUREMENT POLICY:** Procurement for the Airport Authority will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the Airport Authority. The Chief Executive Officer has the vested authority to execute a contract, subject to Board approval where required.
- 9) **RESPONSE SIGNATURES:** Responses must be signed in ink by an authorized official of the Respondent. Each signature represents a binding commitment upon the Respondent to provide the goods and/or services offered to the Airport Authority, if Respondent is determined to be the most qualified Respondent.
- 10) **CONTRACT AWARD:** The Airport Authority reserves the right to award by item, group of items, or total response. The Respondent to whom the award is made will be notified at the earliest possible date. Tentative acceptance of the response and award of the contract will be provided by written notice sent to the Respondent at the address designated in the response. All responses must be firm for at least 90 days from the due date of the response. If, for any reason, a contract is not executed with the selected Respondent within 14 days after notice of recommended award, then the Airport Authority may recommend the next most qualified Respondent.
- 11) **NO RFQ RESPONSE:** Respondents who receive this RFQ but who do not submit a response should submit a notice stating the reason(s) for not responding.

12) FREEDOM OF INFORMATION ACT (“FOIA”) REQUIREMENTS: Responses are subject to public disclosure after the deadline for submission.

SECTION 2 – SPECIAL REQUIREMENTS

1) MINIMUM QUALIFICATIONS: The Airport Authority is seeking Respondents who are qualified to provide complete Construction Manager at Risk (CMR) services. The Airport Authority believes that the previous experience and knowledge of the Respondent and its team in managing previous projects is critical to successfully performing the required services for this project. Therefore, a Respondent¹ will be deemed non-responsible and rejected without any further evaluation if they do not meet the following qualifications:

- a) Must have completed at least five (5) below grade infrastructure construction projects within the last five (5) years that included the construction within an area under the jurisdiction of an entity other than the owner of the infrastructure construction project; and
- b) Must have managed five (5) projects within the last five (5) years that included multiple sub-contractors; and
- c) Must have on staff, at least one (1) Professional Engineer licensed in the State of Michigan who will be assigned to the contract resulting from this RFQ, who has at least five (5) years of experience with constructability reviews of below grade infrastructure systems; and
- d) Must have a Project Manager who will be assigned to the contract resulting from this RFQ who has a minimum of three (3) years of experience in developing resource loaded schedules utilizing scheduling software; and
- e) Must have a staff member who will be assigned to the contract resulting from this RFQ who has a minimum of three (3) years of experience in developing accurate project cost estimates from design development documents; and
- f) Must have on staff, at least one (1) Construction Manager or Project Manager that will be assigned to the contract resulting from this RFQ who has managed the construction of at least two (2) construction projects that included the installation of at least one (1) mile of below grade infrastructure (water main, sanitary sewer, storm sewer) within the last six (6) years; and
- g) Must have at least one Team Member who will be assigned to the contract resulting from this RFQ who has been responsible for the material testing for at least five (5) projects completed within the last five (5) years; and
- h) Must have at least one Team Member that has managed at least one (1) below grade infrastructure construction project within the last five (5) years that included the construction within a Michigan Department of Transportation (MDOT) Road crossing; and
- i) Must have at least one (1) Team Member that has on staff a Professional Surveyor licensed in the State of Michigan who will be assigned to the contract resulting from this RFQ, who has at least five (5) years of experience with field layout of below grade infrastructure systems.

¹ Respondent: a business (corporation, joint venture, LLC, partnership, sole proprietor, etc.) that submits a Response to this RFQ and will be contractually bound under the contract with the Airport Authority if selected by the Airport Authority.

² Team Member: an entity identified in the Respondent's response to this RFQ that will be assigned to one or more project (s) outlined in this RFQ if awarded the contract. A Team Member may be the Respondent's business (as identified on the Business Information Questionnaire included in this RFQ), or a Subconsultant, or if the Respondent is a partnership or joint venture, an entity that is part of the partnership or joint venture.

SECTION 3 – INTRODUCTION AND BACKGROUND

- 1) **INTRODUCTION:** Through this Request for Qualifications (RFQ), the Airport Authority hereby invites teams of businesses that meet the minimum qualifications set forth herein to submit qualifications for providing Construction Manager at Risk services for construction of a De-Icing Fluid Force Main for the Detroit Metropolitan Wayne County Airport. This project will be funded in part by the Federal Aviation Administration (FAA). The project consists of the installation of an underground force main sewer within county rights-of-ways, private easements, and property under the jurisdiction of other agencies and entities. The successful Respondent will provide pre-construction, construction, and post-construction management services for this underground infrastructure projects.
- 2) **BACKGROUND:** The Airport Authority is implementing a second outlet for seasonal discharge of diluted spent deicing fluid runoff from Pond 3W. The new outlet will discharge to the Wayne County North Huron Valley / Rouge Valley Sewer System, which is tributary to the Detroit Waste Water Treatment Plant. The point of connection is located near the intersection of Venoy Road and Michigan Avenue within the median of the boulevard. The first phase of the construction project, which included a pumping station and the portion of the force main on Airport Authority property, was constructed in 2007. This previous project included the installation of high-density polyethylene (HDPE) pipe and was constructed primarily by the use of directional drilling. This project will complete the remaining portion of the force main (approximately 24,000 feet) and includes start-up of the equipment installed under the previous construction contract. Operation of the system is required prior to June 2010. An overall map of the anticipated force main route with important features and anticipated methods of construction are shown on Attachment 'A' of this RFQ. Attachment A can be downloaded from the following weblink: http://www.metroairport.com/pdf/attachment_A_2-03-09.pdf

The force main for this project starts on the south side of the Goddard Road Extension / I-94 Service Drive, east of the west service drive entrance to the Northwest Airline hangers. The pipe at the end of first phase is a 12-inch diameter ductile iron pipe and terminates with a temporary plug and blow-off.

The Airport Authority will apply for permits associated with Wayne County Department of Public Services, Detroit Water and Sewage Department (DWSD), Michigan Department of Environmental Quality, Norfolk Southern Railroad, the City of Romulus and the City of Wayne, wetlands, drains, utilities, railroad and roadways. The successful Respondent will be responsible for obtaining all permits and pay for associated construction permit fees, inspection fees, bonds, and insurances of the respective governmental agencies.

- a) Construction Methodology – The force main construction will consist of directional drilling 12" HDPE pipe and open trench with 12" ductile iron pipe. The exact amount of each construction method will be determined through the design process. In ecologically sensitive areas and some drain crossings, directional drilling or Jack-and-bore construction methods will be required as well as at some railroad crossings and primary road crossings.
- b) Utility Crossings – Primary utility pipe crossings of the proposed force main will require jack-and-bore casing construction to avoid conflicts with a 48-inch DWSD water main along Wick Road, 84-inch Boice Storm Drain at Van Born Road, 84" Boice Storm Drain north of Annapolis, 24-inch drain at Venoy Road, two (2) "Buckeye" gas pipelines, and several other public utilities with varying depths based on site-specific locations.

- c) Tower Corridor – A portion of the proposed force main extends north adjacent to a Detroit Edison corridor between Ecorse Road and Beverly Road. Directional drilling operations will likely be necessary to avoid ecologically sensitive areas. Easements will be procured from the property owners to determine the proposed location of construction where necessary.
- d) Fairways at Gateway Development – A significant portion of the force main may be constructed through a proposed utility easement between Beverly Road and Van Born Road. The pipe will extend in a north-south direction through the Fairways subdivision in open space areas and the existing golf course. The proposed force main must be constructed to avoid ecologically sensitive areas and landscaping berms within the development.
- e) Supervisory Control and Data Acquisition (SCADA) System – The discharge from the force main will require stoppage during times that the interceptor and Waste Water Treatment Plant (WWTP) are experiencing high flows, which typically occurs during larger rain events or major snowmelt conditions. Depth monitors will need to be placed at several locations and a SCADA system be installed to transmit the data to the newly constructed pumping station on airport property.

The Airport Authority operator will utilize the data to decide on the flow rate to be pumped. The SCADA system will need to be utilized to transmit this flow rate to the pumping station constructed on the airport property during Phase I of this project. A programmable logic control will be provided at the pumping station to determine which pump is required for operation. The meter and throttling valve will be used to “fine-tune” the flow rate.

An alarm system will be provided that notifies the Airport Authority if certain parameters are exceeded. An automatic shut-down of the system will occur if critical parameters are exceeded. The system will be capable of a manual shut-down by the Airport Authority operator or authorized personnel from a remote location.

- f) Pond 3W Dredging - The Airport Authority may require the dredging of existing sediment within Pond 3W to its original existing pond bottom. The existing pond is approximately eleven (11) feet deep and covers an area of approximately seventeen (17) acres.

3) ANTICIPATED MILESTONE SCHEDULE: It is anticipated that the Construction Manager at Risk will develop the final Baseline schedule and shall consider the following:

- | | |
|---------------------------------|-----------------|
| a) Negotiate final GMP Contract | June, 2009 |
| b) Notice to Proceed | August, 2009 |
| c) Begin Construction | August, 2009 |
| d) Substantial Completion | June 2, 2010 |
| e) Final Completion | August 31, 2010 |

SECTION 4 – SCOPE OF WORK

- 1) **SCOPE OF WORK:** The Construction Manager at Risk (CMR) will be responsible for all pre-construction, construction, and post-construction services necessary to support the design and construction of the Force Main project. **All phases of work must be performed in accordance with the attached Terms and Conditions and Form of Agreement.** A summary of the anticipated scope of work includes, but is not limited to:
- a) **Phase I, Pre-Construction Phase.** Under this phase it is expected that the Construction Manager at Risk will provide analysis, consultation, advice, and reasonable recommendations relating to the design, planning and administration of the project, including, but not limited to:
- i) Establish documentation requirements consistent with the Terms and Conditions;
 - ii) Required Document Format and Software:
 - (1) The Construction Manager at Risk will be required to submit all documents in hard copy and electronic format as requested by the Airport Authority (such as Word, Excel, AutoCAD 2008, PDF and TIFF). All drawings shall be prepared using Airport Authority approved graphic (layer, line, font, etc.) standards.
 - (2) The Construction Manager at Risk will be required to provide a web-based computerized project management system acceptable to the Airport Authority. This system must allow for the management of all business processes used by the Airport Authority for the construction of this capital project. The system must assign the Airport Authority as system administrator, utilize a named user assignment, and track all data entry and modifications for audit purposes;
 - iii) Develop Construction Manager at Risk team organization, reporting structure, and work plan;
 - iv) Complete Design Reviews – the Construction Manager at Risk will be an active participant of the project team (Respondent, Team Members, Airport Authority, FAA, Wayne County Department of Environment, and Designer) and provide design input at the project team meetings and throughout the formal review submittal process. The reviews include, but are not limited to:
 - (1) Input on Design – the Construction Manager at Risk will provide recommendations during the design process. This effort will identify opportunities for cost, schedule, or operation/maintenance savings that can be achieved without adversely impacting the safe operation, design intent or functional quality of the force main.
 - (2) Constructability Reviews – are intended to address the ability to successfully construct the design as intended. It is expected that the Construction Manager at Risk will provide valuable insight into means and methods intended to reduce cost, improve schedule, and worker safety.
 - (3) The Guaranteed Maximum Price (GMP) estimates will be developed based on the plans available at the time the GMP is negotiated. The process/schedule for developing and negotiating the GMP is described in the Form of Agreement and the General Terms and Conditions.
 - (4) Phasing and Logistics – will be an integral part of construction and receipt of sub-contractor bids. The Project Substantial Completion date is critical. Consider in the work plan and schedule that construction is near or at, a school, wetlands, and a golf course. The Construction Manager at Risk is to provide assistance to the Designer to develop documents in such a manner to facilitate the efficient phasing, bidding, and construction in accordance with the plan, in order to meet the substantial completion date.
 - v) **Schedule Development** – the Construction Manager at Risk will develop a detailed Baseline Schedule with input from the project team. Baseline and subsequent schedules will be developed in a software and format acceptable to the Airport Authority and updated at agreed upon intervals, but not less than required by the General Terms and Conditions. The

schedule will identify detailed work activities as described in the General Terms and Conditions as well as:

- (a) Milestones
- (b) Long lead purchases
- (c) Bid packages
- (d) Trade packages (contractor procurement)
- (e) Start/completion dates
- (f) Activity durations
- (g) Float times
- (h) Critical activities

b) Phase II, Construction Services: Under Phase II, it is anticipated that the Construction Manager shall perform the following services:

i) **Procurement of Subcontractor Services** – In procuring subcontractor services for the Force Main project, the CMR shall generally comply with the Airport Authority procurement requirements including, but not limited to, the following:

- (1) All Construction Services must be awarded through a publicly-announced and competitively-solicited process using a Request for Bid (RFB) method containing at a minimum, the following:
 - (a) Instructions to the Bidders;
 - (b) Scope of Work;
 - (c) Minimum qualifications;
 - (d) Statements regarding Bid Guarantee;
 - (e) Drawings and Specifications for the Work;
 - (f) Disadvantaged Business Enterprise (DBE) Participation goals;
 - (g) General, Special and Supplemental Conditions that are attached to the CMR's Form of Agreement, with a statement that all subcontractors will be held to the same conditions as the CMR;
 - (h) Notice of retainage withheld;
 - (i) A statement indicating that the Bidder is in compliance with any applicable provision of the Airport Authority's Ethics Ordinance, and if awarded a contract, will comply with the Airport Authority's Ethics Ordinance;
 - (j) A statement that the Bidders shall comply with applicable federal contracting requirements;
 - (k) A statement requiring the successful Bidder to provide Performance and Payment bonds equal to 100% of the contract amount for all contracts in excess of \$50,000.
 - (l) A statement that questions from the Bidders must be in writing and will be responded to in the form of an addendum distributed to all bidders; and
 - (m) A Price Page used to establish the total cost for the Work solicited;
 - (n) A date, time and location where the bids must be submitted.
 - (o) The basis of award to the lowest responsive and responsible bidder.
 - (p) Federal Contract Supplemental Provisions (Federally Funded Project)
- (2) Public opening of all bids with the Airport Authority and the Designer present.
- (3) Starting with the lowest priced bid, the bid submittal shall first be evaluated for responsiveness and, if determined to be responsive, then that bidder is evaluated to determine if they are responsible:
 - (a) Responsiveness requires that all mandatory submittal requirements have been met.
 - (b) Responsible requires that the Bidders have: (i) met the minimum qualifications stated in the RFB, (ii) the bidder is not in arrears or default to the Airport Authority, (iii) the bidder is not debarred by the Airport Authority, and (iv) that the bidder has not committed a violation of the Airport Authority Ethics Ordinance that resulted in termination of a contract within the last two-years.

- (4) The CMR shall make a written recommendation for award to the Airport Authority for approval.
 - ii) **Permits** – the CMR will coordinate with the Designer and those jurisdictions having authority to ensure that all necessary permits are obtained in a timely fashion, in support of the schedule.
 - iii) **General Conditions** – the CMR will be responsible for managing the site including the allocation of storage areas, jobsite trailers, site access, site maintenance, jobsite safety and security, jobsite foreign object debris (FOD) control, waste removal, etc.
 - iv) **Monthly Reporting** – the CMR will provide the Airport Authority with monthly progress reports that are in conformance with the Form of Agreement and the General Terms and Conditions.
 - v) **Management** – The CMR shall be responsible for managing the project including all self-performed and subcontractor activities in accordance with the Form of Agreement and General Terms and Conditions.
 - vi) **Start up and Commissioning of System** - The CMR shall be responsible for the start up and commissioning of the De-Icing Force Main System including the depth monitors, pump operation, SCADA communications and alarm systems.
- c) **Phase III, Post Construction Services.** In this phase, it is anticipated that the CMR will:
- i) Ensure completion of all punch list and :
 - (1) Provide “as-built” plans or red-lines to the Designer for implementation into Engineer’s drawings that meet the Airport Authority requirements
 - (2) Provide operations and maintenance manuals as well as the required training of of Airport Authority’s personnel.
 - (3) Provide warranties of the system.
 - (4) Submit all remaining spare parts to the WCAA
 - (5) Closure of all permits
 - (6) Post Construction insurance requirements
 - (7) Resolution of all claims
 - (8) All other requirements of the General and Supplemental Terms and Conditions.

SECTION 5 – SPECIAL INSTRUCTIONS, TERMS AND CONDITIONS

- 1) **CONTRACT TERM:** The contract term commences upon issuance of the Airport Authority's Notice to Proceed and terminates upon the Airport Authority's final payment for all required services resulting from this RFQ.
- 2) **PAYMENT:** The CMR shall submit monthly invoices for payment. The Airport Authority will pay the CMR for Airport Authority authorized work monthly based upon submission of a correct and complete invoice in accordance with the Form of Agreement.
- 3) **INSURANCE SUBMISSION REQUIREMENTS:** Proof of insurance as stated in the insurance requirements listed in the "Form of Agreement" of this RFQ will be required within five (5) days of request. To expedite the process, a copy of your current coverage may be submitted with your response.
- 4) **AOA INSURANCE REQUIREMENTS:** In accordance with the Form of Agreement and General Terms and Conditions (Article 10), the successful Respondent, at its own expense and in its own name, and with the Airport Authority and the County of Wayne, Michigan as additional insureds for commercial general and automobile liability coverages, must provide and keep in force during the term of this Agreement, the required insurance coverage's , provided by a company(s) licensed to conduct business in the State of Michigan, acceptable to Airport Authority, with limits not less than indicated for the respective items or as otherwise agreed.
- 5) **BADGING REQUIREMENTS:** All staff of the CMR and Subconsultant(s) that enter the AOA will be required to obtain Airport Authority Security Identification badges. The CMR will be required to access the airfield and be familiarized with Detroit Metropolitan Wayne County Airport (DTW) AOA Safety and Security procedures. See Attachment B.
- 6) **KEY PERSONNEL AND SUBCONSULTANTS:** It is essential that the Respondent provide adequate experienced personnel and subconsultants, capable of and devoted to the successful accomplishment of work to be performed under the contract. The Respondent must agree to assign key personnel or those individuals that the Respondent considers critical to successfully completing the projects outlined in this RFQ.
 - a) The Respondent agrees that, once assigned to work under the contract, Key Personnel and sub consultants shall not be removed or replaced without prior written notice to the Airport Authority.
 - b) If key personnel and subconsultants are not available for work under the contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Respondent shall immediately notify the Airport Authority, and shall, subject to the concurrence of the Airport Authority, replace such personnel with personnel of substantially equal ability and qualifications.

SECTION 6 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM (REQUEST FOR QUALIFICATIONS)

Definitions

For purposes of this section, the following definitions apply:

Affiliation: The Airport Authority uses the same definition as is included in the Small Business Administration (SBA) regulations, 13 CFR part 121:

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among the parties exists such that affiliation may be found.
- (2) In determining whether the affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Immediate Family Member: the father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law of the owner of a business.

Supplier: a firm classified as a manufacturer, regular dealer or broker

- (1) A *manufacturer* operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract.
- (2) A *regular dealer* owns, operates or maintains store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased in the usual course of business.
- (3) A *broker* transports materials as required under the contractual arrangement.

Program Overview

It is the policy of the Wayne County Airport Authority (Airport Authority) that disadvantaged business enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts to supply federally-funded goods and services to the Airport Authority. The Airport Authority's DBE program is governed by, and managed, in accordance with 49 CFR Part 26.

For federally funded contracts, the Airport Authority intends to meet the "overall DBE goal" for the fiscal year during which a contract is awarded by setting specific DBE goals on a contract-by-contract basis. Contract goals will be based upon the actual required types of work and the availability of "ready, willing and able" DBEs to perform the required types of work. Specific contract goals are set to cumulatively result in meeting the portion of the Airport Authority's fiscal year overall goal that the Airport Authority projects it will not be able to meet through the use of "race-neutral" means. To this end, a DBE goal for a particular contract may be more or less than the fiscal year "overall DBE" goal, depending upon the

type of work required and the availability of “ready, willing and able” DBEs. Each competitive solicitation will specify the DBE goal for that particular contract on the “Subconsultant Form (DBE and Non-DBE).”

The response must include information about each subconsultant (DBE and Non-DBE) that will be utilized in this contract. Subconsultants (DBE and non-DBE) cannot be added or replaced after submittal of the response without the prior written approval of the Director of Procurement for the Wayne County Airport Authority or his or her designee.

DBE Goal for this Contract

The DBE goal for this contract is fourteen percent (14%) of the total contract value.

The DBE contract goal is applicable to the full contract value, including any contract change orders or amendments. In addition, the DBE goal is also applicable during the entire term of the contract, including any extension periods.

The Respondent submitting the response is responsible for understanding and abiding by all laws, regulations, ordinances and policies associated with DBE participation for this contract. The respondent must meet with the Airport Authority's DBE Coordinator to discuss DBE subcontractor goal setting prior to procurement of subcontract services.

Required DBE Certification by a Michigan Unified Certification Program (MUCP) Agency

Under 49 CFR Part 26, in order to count towards meeting a DBE goal set by the Airport Authority, as a minimum threshold, a firm must be DBE certified by an agency participating in the Michigan Unified Certification Program (MUCP). This is required even if a firm is already certified as a DBE in another state. Proof of current DBE certification must be submitted with a Response.

MUCP Directory: The MUCP directory, which is a list of DBEs certified by MUCP certifying agencies, is available at <http://mdot270.state.mi.us:8080/UCP/HomePageServlet>.

Counting Participation Towards Meeting DBE Goal

A firm meets a DBE goal by either having actual DBE participation in an amount equal to the DBE goal or by making “good faith efforts” to meet the goal.

Pursuant to 49 CFR § 26.55, all DBEs proposed for participation in this contract must perform a commercially useful function (“CUF”) in order for the dollars paid to the DBE to qualify toward the participation goals of this contract.

If a Response is submitted with DBE participation at a percentage lower than the goal set for the contract, then the Response must include sufficient written documentation of the “good faith efforts” the Respondent made to meet the goal. 49 CFR 26.53(c) provides that the Airport Authority cannot commit to contracting with a business that has not provided “complete and accurate and [adequate documentation] of the Respondent’s good faith efforts” to meet a DBE goal. “Good faith efforts” must be made before the Response Deadline. “Good faith efforts” made after the Response Deadline will not be considered. Failure to submit actual DBE participation or written evidence of adequate good faith efforts will result in the Response being deemed non-responsive and rejected without any further evaluation.

Guidance Concerning Documentation of Good Faith Efforts

The Airport Authority exercises due diligence in setting both its overall DBE annual goal and its contract-specific DBE goal. Nonetheless, there may be instances in which meeting the DBE goal on a particular contract may not be feasible under the unique circumstances of that contract. In those instances, a consultant may seek a waiver of all or part of the DBE goals for the particular contract. In order for such a request for a waiver to be considered by the Airport Authority, as part of the Response submission, the consultant must provide evidence of pre-response, i.e. before the Response Deadline, efforts to achieve DBE participation in compliance with 49 CFR 26.53(c). Such evidence should include, but not be limited to, the following:

- (1) The methods, means, and date(s) by which the consultant timely notified DBEs of the potential for bidding on the subject contract, such as:
 - e-mail or facsimile communication with a specific list of DBE consultants;
 - use of advertising in general circulation trade publications and other media whose target audience is DBE consultants such as women or minority trade publications; and/or
 - highlighting the potential bid opportunity on the consultant's website or other consultant originated or controlled communications.

All such notification efforts should be timely, aggressive and thorough.

- (2) Identification of all the DBEs whom the consultant specifically notified. Such information should include:
 - the name and address of the DBE;
 - the DBE's principal(s);
 - the scope of services marketed to the particular DBE, if any;
 - the date(s) of contact;
 - the method of contact;
 - whether the consultant had worked with the DBE on any prior projects and if so, a list of all such work performed within the two years immediately preceding the Response Deadline;
 - the fact and the extent of any follow-up done with the DBEs; and
 - any bids or quotes provided by the DBE.
- (3) Documentation that the information provided to DBEs about plans, specifications, requirements of the contract and scope of services were adequate to facilitate the DBE's ability to provide a substantive bid response to the consultant;
- (4) Documentation as to whether the consultant selected portions of the work to be performed by DBEs in order to increase the likelihood of DBE participation, including, where appropriate, breaking down contracts into smaller, economically feasible units;

- (5) Documentation as to whether the consultant negotiated in good faith with interested DBEs, including but not limited to contacting DBEs who have expressed interest in the project, in some manner, such as submitting a quote or making an inquiry;
- (6) Documentation showing that the consultant did not reject DBEs as unqualified, or for other reasons, without a bona fide basis consistent with industry standards and only after thoroughly investigating the DBEs capacity, capabilities and reasonableness of bid response;
- (7) Documentation as to whether the consultant made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Airport Authority or the consultant;
- (8) Documentation as to whether the consultant effectively used the services of available community and trade associations whose target memberships are DBEs and/or women and minority owned businesses; local, state and federal minority/women assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs;
- (9) Documentation as to whether there was any consideration given to opening up to DBEs other aspects of the scope of services of the contract that would otherwise have been self-performed or gone to non-DBEs in order to obtain the DBE participation goals for this contract;
- (10) Evidence, if any, of the consultant's record of meeting or exceeding DBE participation goals on prior Airport Authority or other contracts that included federal DBE goals.

Please Note: The above list is not intended to be exhaustive or exclusive or a checklist. In addition, the Airport Authority specifically reserves the right to seek additional or different information in evaluating a consultant's good faith efforts to meet the particular DBE participation goals.

In evaluating the consultant's good faith efforts, in addition to the consultant's purported good faith efforts documentation, the Airport Authority will consider a variety of other factors such as all of the response materials submitted by the consultant, including the scope of services to be self-performed by the consultant, the scope of services designated to be performed by non-DBE consultants, and the consultant's history of DBE participation on Airport Authority or other contracts for which there was a federally-mandated DBE participation goal, among other factors.

Providing documentation of the above factors is not a guarantee that the consultant's purported good faith efforts will be deemed adequate. Also, if as part of its response submission, the consultant fails to include actual DBE participation sufficient to meet the DBE goal for this contract, and:

- provides no evidence of good faith efforts; or
- provides only conclusory statements of good faith efforts; or
- does not provide evidence of adequate good faith efforts;

then the Airport Authority has the right to reject the consultant's response in its entirety as non-responsive.

DBE Subconsultant Utilization Plan

In order for the Airport Authority to fully and fairly evaluate the proposed participation of DBEs on this contract, the consultant must provide complete and accurate information about all of the

subconsultants, **DBEs and non-DBEs**, proposed for participation. Toward that end, the consultant must provide the following minimum information.

For each DBE proposed for participation in this contract, provide the following information:

- DBE Company Name
- DBE Address
- DBE Principal/contact person
- Detailed description of the scope of services to be self-performed by the DBE
- The total dollar amount of the contract to be self-performed by the DBE
- Percentage of the DBE goal to be attributed to this particular DBE
- Evidence that the DBE is certified by MUCP at the time of the Response Deadline
- If the DBE will subcontract any part of the scope of services to any third party, then provide the company name, address, and principals of all such third parties, as well as a detailed description of the scope of services to be performed by each such third party and the total dollar amount of the contract to be performed by each such third party.
- If the DBE will be performing trucking services, then identify how many trucks the DBE owns and will be available for performance on this contract. To the extent that the DBE will be leasing any trucks in connection with this project, specify how many trucks will be leased, and from whom the DBE will be leasing the trucks.

Identification of any Supplier, Manufacturer, Regular Dealer, or Broker: Please note the definition of supplier, manufacturer, regular dealer or broker set forth herein. Will any of the above DBEs perform as a supplier, manufacturer, regular dealer or broker? If yes, please identify all such DBEs and the particular role it will perform on this contract.

For each non-DBE proposed for participation in this contract, provide the following information:

- Company Name
- Address
- Principal/contact person
- Detailed description of the scope of services to be self-performed by the non-DBE
- The total dollar amount of the contract to be self-performed by the non-DBE.

Identification of Any Affiliations or family relationships: Please note the definitions of affiliation and immediate family member set forth above. Are any of the above subconsultants, whether DBE or non-DBE affiliated with the consultant submitting this response? If yes, identify all such subconsultants and provide a detailed description of the nature of the affiliation.

Are any of the above subconsultants, whether DBE or non-DBE owned or controlled by an immediate family member of the consultant submitting this response? If yes, identify all such subconsultants and provide a detailed description of the relationship.

Contact for Airport Authority DBE Program

For assistance, or for more information on the Airport Authority's DBE Program or the Michigan Unified Certification Program (MUCP), contact Valerie Pilot, DBE Coordinator, at valerie.pilot@wcaa.us, or (734) 955-3885.

Failure to provide this information will result in a rejection of the Respondent's entire response as non-responsive.

SECTION 7 – EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

- 1) EVALUATION:** All responses received will be evaluated by an Evaluation Committee comprised of, at a minimum, Airport Authority representatives from three different operating divisions/departments. All responses will first be evaluated for responsiveness, then responsibility. All responsive and responsible responses then will be evaluated on the following criteria, which are listed in relative order of importance:

- a) Construction Management Experience and Qualifications**
- b) Performance with Disadvantaged Business Enterprise (DBE) Participation**
- c) Resource and Communications Plans**

Each response submitted to this RFQ shall focus on these criteria as each relates to the type of work expected to be performed under this RFQ. In addition, the Evaluation Committee also may consider the past performance of the Respondent and/or Team Members as well as key personnel on other contracts with the Airport Authority or other businesses. The Airport Authority reserves the right to make such additional investigations as it deems necessary and may require the submission of additional information.

2) GENERAL SUBMITTAL REQUIREMENTS:

- a) NUMBER OF COPIES:** One original, plus nine copies (ten total) of the entire response must be submitted. The original must be marked as an original. Each copy must be identical to the original.
- b) RESPONSE FORMAT:** Each response should be bound, and prepared simply and economically. Responses shall be in the same order as the requirements are listed below to ensure the evaluation committee is able to easily locate the information that is requested in this solicitation. Marketing and promotional brochures should not be included unless the information directly addresses a specific submittal requirement listed below.
- c) RESPONSE CONTENT:** The Respondent must include the following items, or the response will be deemed nonresponsive and rejected without any further evaluation.
 - i) All required forms contained in this RFQ, fully completed:
 - (1) Response Form,
 - (2) Subconsultants Form (DBE and Non-DBE Form),
 - (3) Verification of Minimum Qualifications Form.
 - ii) Evidence that demonstrates that the Respondent meets each of the Minimum Qualifications listed in this RFQ.
 - iii) Evidence that the Respondent will meet the Disadvantaged Business Enterprise (DBE) goal as required under Section 6 of this RFQ.
 - iv) The response must include information about each subconsultant (DBE and Non-DBE) that will be utilized in the performance of a resulting contract. Provide a description of the services the subconsultant will perform. Subconsultant cannot be added or replaced after submittal of the response without the prior written approval of the Airport Authority's Director of Procurement or his/her designee.
 - v) A complete response to each of the items listed under "Submittal Requirements Specific to Evaluation Criteria" below. These topics are intended to obtain more specific information

about the Respondent's experience with topics of interest to the Airport Authority's capital improvement program.

3) SUBMITTAL REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: Submit a separate response to each of the following items which are specific to the evaluation criteria. The Airport Authority is looking for demonstrated Construction Management and General Contractor experience.

a) Construction Management Experience and Qualifications

- i) Team Organization – Provide organizational chart(s) that illustrate the relationship between the Team Members proposed for the projects described in this RFQ. Also, illustrate the duties and responsibilities of each team member and its key personnel on the organizational chart(s).
- ii) CMR Experience and GMP Qualifications - Provide information that illustrates the background and experience of the team with CMR and GMP services as described in this RFQ. The following information must be included with your response:
 - (1) Information related to up to ten (10) most recent projects where a team member was involved as a Construction Manager. Projects listed in the Verification of Minimum Qualification Forms can be referenced in this response. Projects where a Guaranteed Maximum Price was negotiated are preferred. Include the project name, location, description, scope, size, cost, owner, owner point of contact information, start and end milestone dates, stakeholder involvement, and unique features and challenges resolved for each project. Differentiate between projects where the Team member(s) performed construction management services versus, merely performing General Contractor services (managing subcontractors).
- iii) Construction Management Experience and Qualifications of Key Personnel – Provide information that illustrates the pre-construction, construction, and post construction management experience of the key personnel, within the last ten (10) years that will be assigned to the project described in this RFQ. Submit project information that describes the experience of Team Member(s) in completing the following:
 - (1) Design Reviews - Describe what phase of design the Respondent became involved in the Design Reviews. Include explanations of the methodology and insight provided at various stages of design that saved the owner time and money.
 - (2) Cost Estimate Development
 - (a) Provide the detailed method(s) that will be used to ensure that the construction cost estimates will be accurate. Provide the degree of accuracy that can be expected by the Airport Authority. Provide description of the process that will be used to develop accurate cost estimates.
 - (b) Provide no more than a three page description of the projects the Respondent has worked under a Guaranteed Maximum Price (GMP) contract. The Respondent must provide all of the following in the description: start and end dates, GMP amount, process for determining the GMP, owner's contact information including name, address and phone number, and a summary of the project.
 - (3) Scheduling
 - (a) Describe the software and format that will be utilized for preparation of the detailed baseline schedule in accordance with the requirements in the scope of work.
 - (b) Provide a detailed description of how the Respondent addressed significant delays that were encountered on a project with a fixed completion date.

- (4) Work Plan - Provide a brief statement describing the construction phasing and identifying issues:
 - (a) Based on the information provided, recommend a phasing plan for the project.
 - (b) identify construction issues expected to be encountered.
 - (c) Provide a prioritized list, description, and draft plan of action for each challenge, issue, and concern related to the design and construction of the force main that have been identified by the Respondent.
 - (d) Provide a narrative of the "single" item that the Respondent believes is most important to successfully completing the force main project, and the specific actions that will be taken by the Team Members to address this item
 - (5) Quality Assurance and Quality Control (QA/QC), Safety Programs and Procedures - Provide a detailed description of the Firm's QA/QC process including method of enforcement.
 - (6) Material Testing – Provide a description of anticipated material testing required to demonstrate QA/QC.
 - (7) Applicable Regulations - Submit information that describes the Respondent's understanding of the requirements and regulations that will govern the projects.
 - (8) Previous Experience as a Construction Manager at Risk (CMR) – If applicable, provide information related to the project(s) and contract(s) that the respondent served as a CMR. Describe the project(s) and provide contract information for the owner(s).
 - (9) Administration of Construction Services Agreement – Explain the methods and processes that will be implemented by the Team Members to efficiently and successfully complete the CMR's responsibilities required by the Airport Authority's General Terms and Conditions of the construction services agreement.
 - (10) Other (six (6) page limit) – Include any other information that illustrates the construction management experience and approach that will be taken by the Team Members to successfully complete the projects assigned to the contract resulting from this RFQ.
- b) Performance with Disadvantaged Business Enterprise (DBE) Participation** – Submit information that illustrates the Respondent's past performance with fulfilling DBE commitments on completed and current projects. Respondents shall provide the number of projects that included a DBE goal for which that the Respondent was the prime consultant within the last five (5) years. Also, identify how many of these projects the Respondent met the DBE goal. For each project with a DBE goal, provide a chart that includes the project title, project location, date(s) of project, owner's DBE goal, proposed commitment of the Respondent, and actual (or current) DBE participation. If the actual DBE participation percentage was less than the percentage committed by the Respondent, provide an explanation.
- c) Resource and Communication Plans:** The Respondent shall provide the following as they relate to the project described in this RFQ:
- i) Responsibilities of Key Personnel - Identify the tasks, assignments, and responsibilities for each key personnel proposed and to be assigned to the project. For each key person, provide a chart that contains the percent (%) of time that is currently dedicated or expected to be committed to projects and tasks outside of the contract resulting from this RFQ. On this same chart, include the percent (%) of each person's time that is expected to be committed to the contract resulting from this RFQ.
 - ii) Staffing and Resource Allocation Plan - Submit a spreadsheet that illustrates the staffing and resource allocation plan, for each Team Member to meet the requirements and schedule of the project. This spreadsheet must include all personnel classifications of each Team Member to be organized in order of anticipated amount of time to be expended on the

contract resulting from this RFQ (with greatest on the top of the list and lowest on the bottom of the list).

- iii) Communication Method and Plan – Provide illustrative chart(s) and/or flow diagrams that illustrate the communication processes and plans that will be implemented by the Respondent between the Team Members and the Airport Authority to ensure successful communication throughout the duration of the contract resulting from this RFQ.
- iv) Other (two (2) page limit) – Include any other information that illustrates the resources and communication strategies that will be implemented by the Team Members to successfully complete the projects assigned to the contract resulting from this RFQ.

4) EXCEPTIONS: Respondent shall clearly identify any proposed deviations from the language in the Request for Qualifications (including its Form of Agreement). Each exception must be clearly defined and referenced to the proper paragraph in this RFQ. The exception shall include, at a minimum, the Respondent's proposed substitute language and opinion as to why the suggested substitution will provide equivalent or better service and performance. **If no exceptions are noted in the Respondent's response, the Airport Authority will rely on complete conformance with this specification and the successful Respondent will be required to perform accordingly.** Responses not meeting all requirements may be rejected. Responses taking exception to material term/conditions in the Form of Agreement (i.e. indemnification, subrogation, insure, ownership of documents, government requirements) will not be considered. The Airport Authority reserves the right to accept or to allow the Respondents to withdraw any or all exceptions.

5) SHORTLISTING: The Airport Authority may shortlist the Respondents based upon responses to the above items. If necessary, the Airport Authority will conduct interviews/presentations. The Airport Authority will notify each Respondent on the shortlist, if such presentation is required. These interviews/presentations will provide an opportunity for the Respondents to respond to questions posed by the evaluation committee and to clarify their responses through exhibition and discussion. The Airport Authority will not reimburse oral presentation costs of any Respondent. If interviews are required, they are anticipated to occur during or after the first week of May 2009. If interviews are held, shortlisted Respondents may have no more than five (5) people participate.

SECTION 8 – REQUIRED FORMS

RESPONSE FORM25

SUBCONSULTANT FORM (DBE and Non-DBE).....27

VERIFICATION OF MINIMUM QUALIFICATIONS FORM29

RESPONSE FORM

Failure to complete this form shall result in your Response being deemed nonresponsive and rejected without any further evaluation.

TO: WAYNE COUNTY AIRPORT AUTHORITY:

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Qualifications.

ADDENDA:

The undersigned has read, understands and is fully cognizant of the Information to Respondents, Offer and Form of Agreement, all Exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): _____, _____, _____, _____ (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

OBLIGATION:

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Consultant, to provide the stated goods and/or services to the Airport Authority, for the term as stated herein, and to enter into an Agreement with the Airport Authority, in accordance with the Conditions, Scope and Terms, as well as the Form of Agreement, together with any written addendum as specified above.

COMPLIANCE:

The undersigned hereby accepts all administrative requirements of the RFQ and will be in compliance with such requirements. By submitting this Response Form, the Respondent represents that: 1) the Respondent is in compliance with any applicable provisions of the Airport Authority's Ethics Ordinance, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFQ, the Respondent will comply with the Airport Authority's Ethics Ordinance.

NONCOLLUSION:

The undersigned, by submission of this Response Form, hereby declares that this Response is made without collusion with any other business making any other Response, or which otherwise would make a Response.

PERFORMANCE GUARANTEE:

The undersigned further agrees that if awarded the Agreement, it will submit to the Airport Authority any required performance guarantee (i.e. irrevocable letter of credit or cash deposit).

SUBMITTAL REQUIREMENTS:

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFQ.

RESPONSE FORM Continued

No response shall be accepted which has not been manually signed in ink in the appropriate space below:

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:

Business Name

Address

City State Zip

Signature of Person Authorized to Sign

Printed Name

Title

Federal Tax ID

Date

For clarification of this offer, contact:

Name: _____

Phone: _____

Fax: _____

Email: _____

SUBCONSULTANT FORM (DBE and Non-DBE)
(This form applies to both DBE and non-DBE subconsultants)

Failure to complete this form and/or provide the information requested will result in your Response being deemed nonresponsive and rejected without any further evaluation.

Are there any sub consultants to be utilized under this contract?

___YES - You must complete both pages*.

___NO - You must complete only this page.

***The response must include information about each subconsultant (DBE and Non-DBE) that will be utilized on the contract resulting from this RFQ. Subconsultants cannot be added or replaced after submittal of the response without the prior written approval of the Director of Procurement for the Wayne County Airport Authority or his or her designee. For further guidance on the completion of this form, review the relevant instructions or contact the Airport Authority's DBE Coordinator.**

Ensuring completion of this form is the responsibility of the Respondent, and failure of the Respondent to timely arrange for its prospective subconsultants to complete and submit the form as part of the response may result in the Respondent's response being deemed nonresponsive.

(For federally-funded projects)

Disadvantaged Business Enterprise (DBE) Participation Commitment

The Airport Authority has set a goal of fourteen percent (14%) for participation by DBEs for this total contract. List the percentage level of DBE participation for which your business commits for this contract:
_____ %

No changes to the DBE participation plan are permitted after submittal of the response without the prior written approval of the Director of Procurement for the Wayne County Airport Authority or his or her designee. The DBE subconsultant selected to perform as part of the DBE participation plan cannot be changed, nor can the participation level of the DBE subconsultant be lowered without such prior written approval.

ACKNOWLEDGED BY:

Business: _____

Name: _____

Title: _____
(Authorized Representative)

Signature: _____

Date: _____

SUBCONSULTANT FORM (DBE and Non-DBE) Continued

(You must submit this form for each DBE and non-DBE subconsultant. If you have more than one subconsultant, make additional copies of this form, as needed)

Prime Consultant _____

State relationship, if any, between Prime Consultant and each Subconsultant: _____

NOTE: Both the Prime Consultant (Designer) and Subconsultant must sign this form appropriately.

Subconsultant: _____ Fed Tax ID _____

Address: _____ P.O. Box _____

City: _____ County _____ State _____ Zip: _____

Phone: (____) _____ Fax: (____) _____

Primary contact person: _____ Phone: (____) _____

Owners/Partners/Corporate Directors/Principal Stockholders (>5% stock holdings): _____

Detailed description of the work to be self-performed by the subconsultant: _____

Is the subconsultant certified as a DBE by an agency participating in the Michigan Unified Certification Program (MUCP)? ____ YES ____ NO. If yes, proof of certification must be submitted with this form.

Include the following (if applicable):

- The support (financial, technical, management, training, etc.) provided by the Bidder to each DBE partner.
- A copy of the documents that contain the proposed legal relationship between the Bidder and each DBE participant (if applicable). (EX: copy of the contract between the prime consultant and the subconsultant)
- Provide a resume for the principal(s) of the DBE firm identified above.

ACKNOWLEDGEMENTS:

SUBCONSULTANT:

I acknowledge that all the above information has been completely filled out and is true.

Authorized Signature

Name & Title

Date

PRIME CONSULTANT:

I acknowledge that all the above information has been completely filled out and is true.

Authorized Signature

Name & Title

Date

VERIFICATION OF MINIMUM QUALIFICATIONS FORM

Failure to complete this form and/or provide the information requested will result in your Bid being deemed nonresponsive and rejected without any further evaluation.

Describe how you as the Respondent meet or exceed the following Minimum Qualifications of the RFB.

- a) Provide at least five (5) below grade infrastructure construction projects completed within the last five (5) years that included the construction within an area under the jurisdiction of an entity other than the owner of the infrastructure construction project, as required in the minimum qualifications.

1. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____ Cost: _____

Jurisdiction other than the owner that was included in project:

Project Name and description:

2. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____ Cost: _____

Jurisdiction other than the owner that was included in project:

Project Name and description:

3. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____ Cost: _____

Jurisdiction other than the owner that was included in project:

Project Name and description:

4. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____ Cost: _____

Jurisdiction other than the owner that was included in project:

Project Name and description:

5. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____ Cost: _____

Jurisdiction other than the owner that was included in project:

Project Name and description:

VERIFICATION OF MINIMUM QUALIFICATIONS FORM Continued

b) Provide at least five (5) projects managed within the last five (5) years that included multiple subcontractors, as required in the minimum qualifications. Attach additional sheets if necessary.

1. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____

Cost of contract: _____ Number of sub-contractors: _____

Project Name, description, and list of sub-contractors:

2. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____

Cost of contract: _____ Number of sub-contractors: _____

Project Name, description, and list of sub-contractors:

3. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____

Cost of contract: _____ Number of sub-contractors: _____

Project Name, description, and list of sub-contractors:

4. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____

Cost of contract: _____ Number of sub-contractors: _____

Project Name, description, and list of sub-contractors:

5. Client/Owner: _____

Contact Name: _____ Title: _____

Phone Number: _____ Date Project Completed: _____

Cost of contract: _____ Number of sub-contractors: _____

Project Name, description, and list of sub-contractors:

- c) Provide the Respondent's staff member(s) who is(are) Professional Engineer(s) licensed in the State of Michigan who will be assigned to the contract resulting from this RFQ, who has at least five (5) years of experience with constructability reviews of below grade infrastructure systems, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s)**

Name: _____ License No.: _____ No. of years experience: _____

- d) Provide the Respondent's staff member(s) who is(are) Project Manager(s) who will be assigned to the contract resulting from this RFQ who has a minimum of three (3) years of experience in developing resource loaded schedules utilizing scheduling software, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s)**

Name: _____ Title: _____ No. of years experience: _____

- e) Provide the Respondent's staff member(s) who will be assigned to the contract resulting from this RFQ who has a minimum of three (3) years of experience in developing accurate project

VERIFICATION OF MINIMUM QUALIFICATIONS FORM Continued

cost estimates from design development documents, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s)**

Name: _____ Title: _____ No. of years experience: _____

- f) Provide the Respondent's staff member(s) who is(are) Construction Managers or Project Managers that will be assigned to the contract resulting from this RFQ who has managed the construction of at least two (2) construction projects that included the installation of at least one (1) mile of below grade infrastructure (water main, sanitary sewer, storm sewer) within the last six (6) years, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s).**

Name: _____ Title: _____

- g) Provide the Team Member's staff who will be assigned to the contract resulting from this RFQ who has been responsible for the material testing for at least five (5) projects completed within the last five (5) years, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s).**

Name: _____ Title: _____ No. of years experience: _____

- h) Provide the Team Member's staff who will be assigned to the contract resulting from this RFQ who has successfully managed at least one (1) below grade infrastructure construction project within the last five (5) years that included the construction within a Michigan Department of Transportation (MDOT) Road crossings, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s).**

Name: _____ Title: _____ No. of years experience: _____

- i) Provide the Team Member's staff member(s) who is(are) Professional Surveyor(s) licensed in the State of Michigan who will be assigned to the contract resulting from this RFQ, who has at least five (5) years of experience with field layout of below grade infrastructure systems, as required in the minimum qualifications. Duplicate below as required. **Attach resume(s).**

Name: _____ Title: _____ No. of years experience: _____

SECTION 9 – OTHER FORMS

BUSINESS INFORMATION QUESTIONNAIRE.....35

Failure to complete this form may result in your Response being deemed nonresponsive and rejected without any further evaluation.

TELEPHONE NUMBER _____

Individual ()

Name	Title

Name	Other Than Respondent Directorship

ADDITIONAL INFORMATION REQUIRED BY THE AUTHORITY

LIST OF PRINCIPAL STOCKHOLDERS (i.e., those holding 5% or more of the outstanding stock)

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____
_____	_____

FINANCIAL DISCLOSURE/CONFLICTS OF INTEREST: Identify any contract(s), including any contract involving an employment or consulting relationship, which the firm, or its partners, principals, corporate officers or owners currently has with the Wayne County Airport Authority, or with any of its board members or officers.

LATEST CREDIT RATING (Specify if other than Dun and Bradstreet)

I hereby certify that the foregoing business information is true, correct and complete to the best of (my/our) knowledge and belief:

(Name of Business)

By _____
(Signature) Date _____

(Title)

By _____
(Signature) Date _____

(Title)

SECTION 10 – FORM OF AGREEMENT

The successful Respondent and the Airport Authority shall be required to sign the attached Form of Agreement.

FORM OF AGREEMENT

CONSTRUCTION MANAGER AT RISK SERVICES AGREEMENT

BETWEEN

WAYNE COUNTY AIRPORT AUTHORITY

AND

[SUCCESSFUL RESPONDENT]

FOR

CONSTRUCT OFF-AIRPORT PORTION OF DEICING FLUID FORCE MAIN

AT

DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

CONTROL NO.: S09-058

FORM OF AGREEMENT
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LIST OF EXHIBITS

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Exhibit SCD	List of Site Conditions Documents
Exhibit PA	List of Project Approvals and Other Requirements Affecting the Work
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Exhibit KPS	Key Project Staff
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Exhibit ALL	Allowances
Exhibit UNIT	Unit Prices
Exhibit ASM	List of assumptions used for the development of the GMP.

CONSTRUCTION MANAGER SERVICES AGREEMENT

This Construction Manager at Risk Services Agreement is made as of the ____ day of _____, 2009, by and between the **Wayne County Airport Authority**, a public body corporate, with principal offices located at Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal-Mezzanine Level, Detroit, Michigan 48242 (hereinafter referred to as the "Airport Authority" or the "Authority"), and _____, a _____ corporation, having principal offices located at _____ (hereinafter referred to as the "Construction Manager").

BACKGROUND RECITALS

A. The County of Wayne, Michigan (hereinafter referred to as the "County") owns the Detroit Metropolitan Wayne County Airport, located in Romulus, Michigan (hereinafter referred to as the "Airport").

B. Pursuant to the Michigan Aeronautics Code, specifically the Public Airport Authority Act, MCL 259.108 – 259.125c, the operational jurisdiction of the Airport is transferred from the County to the Airport Authority, such transfer having been fully approved by the Federal Aviation Administration.

C. The Airport Authority requires Construction Manager at Risk services for the implementation of the Project described below, as set forth in the Airport Authority's Request for Qualifications, Control No. S09-XXX, dated _____, as supplemented and modified by the Addenda, if any, listed in **Exhibit CD** (the "RFQ").

D. The Airport Authority desires to retain the services of a Contractor to complete all the Work as described in the RFQ either by self-performing some of the Work, and/or holding all contracts with sub-contractors performing the Work.

E. The Airport Authority requires the Contractor to perform the Work described herein under a Guaranteed Maximum Price ("GMP") for all Work.

F. The Contractor named above, being the successful respondent under the RFQ, selected by the Airport Authority for award of this Contract in accordance with applicable law, desires to perform such Work, and represents and warrants that it possesses the necessary professional and technical qualifications and capabilities to perform the same within the GMP.

In consideration of the mutual agreements and obligations of the parties set forth below, the Airport Authority and the Construction Manager hereby agree as follows:

ARTICLE 1

PROJECT; CONTRACT DOCUMENTS

1.1 PROJECT; WORK

The Airport Authority is undertaking a project (the "Project"), known as Construct Off-Airport Portion of Deicing Fluid Force Main. The Project will extend a force main sewer from the Airport to an approved discharge location. The work to be performed under this Agreement (the "Work") includes pre-construction services as well as construction services for the Project, including without limitation **[to**

be based upon final award to the Successful Respondent]. The Work is described in the Contract Documents hereafter referred to.

1.2 CONTRACT DOCUMENTS

The “Contract Documents” consist of this Agreement, the Exhibits attached hereto and made a part hereof, the General Terms and Conditions (“General Conditions”), the Supplementary Conditions, the Drawings, the Specifications, bonds delivered by the Construction Manager, the RFQ, and the Attachments and addenda to the RFQ, the Construction Manager’s response to the RFQ, Notice(s) to Proceed issued by the Airport Authority, all other documents which are listed in **Exhibit CD** or are defined herein or in the General Conditions as being Contract Documents, and Change Orders and other Modifications issued after execution of this Agreement. These documents form the contract between the parties (the “Contract”), and all such documents are as fully a part of the Contract as if attached to this Agreement or repeated in full herein. An enumeration of the Contract Documents, other than Modifications issued after execution of this Agreement, appears in **Exhibit CD**. Terms used herein which are not defined in this Agreement shall have the meanings assigned to them in the General Conditions.

ARTICLE 2

CONSTRUCTION MANAGER’S RESPONSIBILITIES

2.1 GENERAL

2.1.1 The Construction Manager accepts the role of fiduciary and the relationship of trust and confidence with the Authority. The Construction Manager shall perform the Work and services as described in the Contract Documents, in full conformity with the requirements set forth or referred to therein. The Construction Manager covenants with the Airport Authority to cooperate at all times in good faith with the Airport Authority, the Airport Authority’s consultants and other representatives, the architect, engineer or other design professional(s) engaged by the Airport Authority in connection with the Work as identified in the RFQ (the “Designer,” which term shall include the Designer’s subconsultants as appropriate) and any other design professionals or other persons or entities engaged or employed by the Airport Authority in connection with the Work or the Project, and to utilize the Construction Manager’s best skill, efforts and judgment in furthering the interests of the Airport Authority; to furnish efficient business administration and supervision; to furnish construction management skills; to furnish at all times an adequate supply of workers and materials; and, consistent with the requirements of the Contract Documents, to perform the Work in the best way and most expeditious manner consistent with the interests of the Airport Authority. The Construction Manager, in performing its services under this Agreement, is an independent contractor and is not an agent or employee of, or a joint venturer with, the Airport Authority.

2.1.2 General Conditions for the Pre-Construction Phase, Construction Phase and the Post Construction Phase will be the Airport Authority’s Construction Manager At Risk General Terms and Conditions, and all Supplemental Terms and Conditions, as attached hereto. The Construction Manager and all subcontractor must perform the Work in accordance with the terms and conditions attached.

2.1.3 The Construction Manager represents that it is experienced and skilled in managing construction subcontractors, schedules, and reporting requirements of projects of the type, magnitude and complexity described in the Contract Documents, that it is familiar with the special problems,

conditions and requirements of construction of the type required for the Project and to be performed on or about the Airport, and in the location of the Site, and that it will furnish the Work complete and fully operable and useable, as indicated by and reasonably inferable from the Contract Documents.

2.1.4 The Construction Manager represents that it is entering into subcontracts with skilled construction subcontractors experienced with the type, magnitude and complexity described in the Contract Documents. The Subcontractors must agree to be bound by the same terms and conditions as those binding the Construction Manager. Additional requirements in the subcontracting provisions are presented in Exhibit RSP.

2.1.5 The Construction Manager hereby represents and warrants to the Airport Authority that it, or its subcontractors, hold and maintain all licenses necessary to engage in the general construction business in the State of Michigan, and is in compliance with all applicable governmental laws and regulations relating thereto.

2.2 SCHEDULE

2.2.1 Substantial Completion and Final Completion. The Construction Manager shall achieve Substantial Completion (as defined in the General Conditions) of the Work, as further provided in Paragraph 8.6 of the General Conditions and other applicable provisions of the Contract Documents, no later than the date stipulated in the RFQ, or for any Phase of the Work as stipulated in the RFQ (the “Substantial Completion Date”), subject to adjustments in the Construction Duration, if any, approved by the Airport Authority in accordance with the Contract Documents. In addition, the Construction Manager shall perform the Work in accordance with all schedule requirements set forth in **Exhibit SCH**, including without limitation any specified milestone dates or dates for Substantial Completion or Final Completion of phases or portions of the Work, and any special requirements for achieving Substantial Completion set forth therein. As used in the Contract Documents, the terms “Substantial Completion” and “Substantial Completion Date” shall be deemed to refer to Substantial Completion of, or the Substantial Completion Date for, the entire Work and any phase or portion of the Work for which a Substantial Completion date is stated above or in **Exhibit SCH**, severally or collectively as the context may require. The period of time from the effective date of the Notice to Proceed given to the Construction Manager in accordance with the Contract Documents to the Substantial Completion Date, for the entire Work or a designated phase or portion thereof, as applicable, together with any valid extensions thereof approved by the Airport Authority in accordance with the Contract Documents, is referred to in the Contract Documents as the “Construction Duration.” If more than one Notice to Proceed is given to the Construction Manager, the Construction Duration shall commence with the first Notice to Proceed issued, unless otherwise specified in such notice. The Construction Manager shall achieve Final Completion of the Work, as defined in Paragraph 8.7 of the General Conditions and other provisions of the Contract Documents, no later than ninety (90) days after Substantial Completion of the Work.

2.2.2 Time of the Essence. The Construction Manager understands and agrees that the times for Substantial Completion of the Work (or designated portions thereof) and Final Completion of the Work as provided in the Contract Documents are essential conditions of the Contract. Further, wherever a maximum period of time is specified in the Contract Documents for the giving of notice by the Construction Manager of a change in the Work or other claim, or for any grace or cure period, it is agreed that time is of the essence with respect to each period of time so specified. Where in accordance with the Contract Documents an extended or additional time is allowed for Substantial Completion of the Work (or a portion thereof) or Final Completion of the Work, or for the giving of

any such notice, or for any such grace or cure period, the new time fixed by such extension shall be of the essence of the Contract. It is understood and agreed that the Construction Duration and other times for the completion of work or giving of notice specified in the Contract Documents are reasonable times for the same taking into consideration the special conditions and problems inherent in performing the Work. If the Construction Manager shall neglect, fail or refuse to achieve Substantial Completion of the Work (or a designated portion thereof) within the Construction Duration, as adjusted in accordance with the provisions of the Contract Documents, the Construction Manager and the Construction Manager's surety shall be responsible for the Airport Authority's damages arising from such delay.

2.2.3 Liquidated Damages. If the Construction Manager shall neglect, fail or refuse to achieve Substantial Completion of the Work, or any Phase of the Work as indicated in the Contract Documents, on or prior to the Substantial Completion Date, as adjusted in accordance with the provisions of the Contract Documents, the Construction Manager and the Construction Manager's surety agree, as a part of the consideration for the execution of this Agreement by the Airport Authority, to pay the Airport Authority the amount as shown in **the RFQ**, for each Phase of Work indicated, per calendar day as liquidated damages, such amount to be payable for each calendar day of delay by the Construction Manager in achieving Substantial Completion of the Work beyond the Construction Duration. Such amount is agreed upon by the parties not as a penalty, but as liquidated damages to cover certain losses, expenses and damages of the Airport Authority on account of such breach of Contract. [as further described in **Exhibit SCH**]. The liquidated damages set forth herein have been fixed and agreed upon by the parties because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Airport Authority would in such event sustain. Such liquidated damages may be retained from time to time by the Airport Authority from payments then or thereafter due the Construction Manager or, to the extent not so retained, shall be paid promptly by the Construction Manager or its surety to the Airport Authority.

2.2.4 In addition to and without limitation of Section **Error! Reference source not found.** above, if the Construction Manager shall not have achieved Final Completion of the Work (including all so-called punch-list work) by dates established in 2.2.1 above, for any reason, and the Airport Authority nevertheless elects to take occupancy or commence use of the Work or any portion thereof, then, at the Airport Authority's option, the Construction Manager may thereafter be required to restrict performance of the Work, or designated portions of the Work, to second or third shift hours. In addition, to the extent the Construction Manager performs work during a period in which the completed facility is in use, the Construction Manager shall be responsible for special cleaning of all work areas and other areas of the completed facility affected by the Construction Manager's performance of the Work, such special cleaning to be performed after every work period unless otherwise directed by the Airport Authority, and if such special cleaning is not adequately performed as determined by the Airport Authority, the Construction Manager shall be responsible for the cost of additional custodial services incurred by the Airport Authority to clean up after the Construction Manager's work.

2.3 SITE

2.3.1 Site. The Project will be constructed on the site (the "Site") described in the Contract Documents. If the Contract Documents indicate specific areas for the Work, the Construction Manager shall restrict its activities, including moving and storage of materials and equipment, to such indicated areas. The Construction Manager shall, at its own costs, obtain the right to enter and store equipment or materials on all property outside the limits of the construction, as necessary to stage the

Work. The Construction Manager understands that the Airport Authority may make changes to the boundaries of the Site indicated in the Contract Documents, or work areas indicated in other materials made available to the Construction Manager

2.3.2 Site Conditions Documents. The Construction Manager hereby confirms that it has received and carefully reviewed the surveys, reports and documents listed in the RFQ referenced hereto. Such documents, together with all additional surveys, reports, plans, studies, tests, information and other documents relating to utilities and subsurface and other conditions affecting or relating to the performance of the Work that may be delivered or made available to the Construction Manager after the date of this Agreement, are referred to collectively as the "Site Conditions Documents." Site Conditions Documents are not Contract Documents, unless they are specifically identified as Contract Documents elsewhere in the Contract. The Construction Manager further confirms that it has examined the Site and local conditions and has carefully studied and compared and will carefully study and compare the Site Conditions Documents with each other and with conditions at the Site. Certain information reflected in the Site Conditions Documents is based upon limited information furnished to the Airport Authority and the Designer by other public agencies, utility companies, other consultants and contractors and other parties, and neither the Designer nor the Airport Authority warrants or guarantees the accuracy or completeness thereof. If differing site conditions (as defined in the General Conditions) are discovered during the progress of the Work, the Construction Manager may request an equitable adjustment in the Contract Sum as provided in the General Conditions, subject, however, to the provisions of this Section and other applicable provisions of the Contract Documents.

2.3.3 Related Work.

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

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

Manager to the Airport Authority as provided above, and the Conflict or condition was not resolved by the Airport Authority or the separate contractor.

2.3.3.3 In construction of the Work, the Construction Manager shall make allowances in its schedule and budget for coordination of its Work with Related Work. If the Work to be performed by the Construction Manager and the Related Work are integrated and inter-dependent, the Construction Manager agrees (i) to use its best efforts to coordinate its Work with the Related Work, and to enable such separate contractor(s) to effectively coordinate the Related Work with the Construction Manager's Work, (ii) to accommodate schedule changes reasonably requested by such separate contractor(s) to the extent possible without causing undue disruption to the Construction Manager's own schedule, and to consider potential impacts on such separate contractor(s) when making adjustments to its own schedule, and (iii) in the event of schedule conflicts or other disputes between the Construction Manager and such separate contractor(s), to work diligently and in good faith with the Airport Authority and such separate contractor(s) to resolve such conflicts or disputes promptly and fairly. If either the Construction Manager or any such separate contractor incurs additional costs as a result of failure of the other party to perform its work in a timely manner and provide access to work zone(s) in accordance with the Airport Authority-approved master schedule (as it may be revised from time to time by agreement of all parties), such additional costs shall be borne by the responsible party.

2.4 PROJECT APPROVALS

2.4.1 The Airport Authority shall be responsible for obtaining those Project Approvals (as defined in the General Conditions) specifically identified in **Exhibit PA** as being the responsibility of the Airport Authority. The Construction Manager shall assist and cooperate with the Airport Authority in connection with obtaining such Project Approvals. The Construction Manager shall be responsible for obtaining all other Project Approvals, including but not limited to those Project Approvals identified in **Exhibit PA**, as provided in Paragraph 3.5 of the General Conditions.

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

2.5 CONSTRUCTION MANAGER AT RISK SERVICES

2.5.1 Pre-Construction Services: Following completion of the GMP negotiations, the Airport Authority will issue a Notice To Proceed to the Construction Manager to start Pre-construction services, as provided herein. Pre-construction services are intended to allow the Construction Manager to participate as a team member with the Airport Authority and the Designer, to develop an understanding of the project scope and schedule, and with that understanding, participate and consult the Airport Authority and the Designer to develop the final drawings and specifications used for the Work. Pre-construction services include, but are not limited to:

- .1 evaluate the program, milestone dates, and budget available for the Work,
- .2 create a preliminary schedule and work plan that provides for phasing of the Work to address construction limitations while meeting the substantial completion date,
- .3 perform value engineering of the design and make recommendations in a report that provide cost control while maintaining a safe and reliable project
- .4 perform constructability review of the design and recommend in a report the means and methods of construction to efficiently and expeditiously construct the Work while maintaining a safe work environment,
- .5 bidding of all Work not self-performed, including all specialty and subcontracted work, in general conformance with the Airport Authority's Procurement Ordinance.

2.5.2 The services which the Construction Manager shall provide include, but are not limited to those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding other services not specifically mentioned herein.

2.5.3 Developing the Guaranteed Maximum Price Proposal– within five (5) calendar days following the selection of the responsible and responsive Construction Manager, the Construction Manager shall attend a Guaranteed Maximum Price ("GMP") development meeting with the Airport Authority and the Designer to further develop an understanding of the project. The Airport Authority will provide the Construction Manager with a set of design drawings and specifications developed at that time. Project milestone dates, information regarding the sequencing or timing, and limitations to conduct the Work will be identified. The Airport Authority shall provide the Construction Manager with the construction budget. The Construction Manager shall inspect the Site to compare the drawings with the Site conditions, and obtain information regarding the physical conditions and aspects associated with the Work. The Construction Manager will use all of this information as a basis to develop the GMP.

2.5.4 Within ten calendar days following the GMP development meeting, the Construction Manager shall submit four copies of the GMP proposal to the Airport Authority for review. The GMP proposal shall be bound and the submittal shall include the following:

2.5.4.1 A summary of the project scope, milestone dates and Project budget amount;

2.5.4.2 A list of all drawings and specification sections provided by the Airport Authority or Designer;

2.5.4.3 A list of allowances and a statement supporting the basis of including any allowance;

2.5.4.4 A list of all assumptions used to develop the GMP;

2.5.4.5 The GMP amount and a breakdown of the elements that make-up the GMP (Cost of the Work, Allowances, and Construction Manager's Contingency).

Following receipt of the GMP proposal, the Airport Authority will evaluate the submittal, and schedule a meeting with the Designer and Contractor to negotiate the final GMP. Following approval of the GMP, the Contractor will execute the contract, then a Notice To Proceed to start the Work can be issued by the Airport Authority.

2.5.5 Within five (5) days of the Notice To Proceed, the Airport Authority, Designer and Construction Manager shall meet to further develop milestone dates and sequencing the work. The results of this meeting

shall be used as a basis for the Designer to prepare final design drawings and specifications, or a portion of the design documents needed to allow the Construction Manager an opportunity to phase the Work. Phasing of the Work should take into consideration such factors as: availability of the site, issuance of permits, weather conditions, availability of materials, and time to perform the Work. The results of this meeting shall also be used as a basis for the Construction Manager to prepare a draft CPM schedule.

2.5.6 Within five (5) calendar days of the meeting identified in Paragraph 2.2.5, the Construction Manager shall submit a draft fully detailed and resource loaded CPM schedule, developed in accordance with Section 7.2.1 of the General Terms and Conditions. The Construction Manager shall coordinate the Project design schedule with the Designer in order to identify when the design, or any portion necessary to support phased construction, will be completed.

2.5.7 Within five (5) calendar days of the meeting identified in Paragraph 2.5.5, the Construction Manager shall submit a draft Project narrative plan (“Plan”) that is coordinated with the draft CPM schedule, in accordance with Section 7.2.3. The work narrative plan shall, in addition to 7.2.3, describe the methods to control, coordinate, evaluate and direct the Work. The Plan must identify the Key personnel and their responsibilities, work flow diagrams, preliminary strategy for phasing the Work based on the anticipated availability of permits and completion of design drawings, procurement, commissioning the Work, and closing out the Project. Further, the Manual must be detailed enough to identify how the Construction Manager’s Contingency amount will be identified, controlled, how conditions different than the assumptions made to develop the GMP are identified that trigger the utilization of contingency, who has authority to authorize to request contingency use, how the Airport Authority will be notified of pending conditions that require use of the contingency, and how the contingency will be incorporated into the pay application. Once approved, the Plan will become a Contract Document by incorporation. The Construction Manager shall revise the manual as necessary and submit the manual for approval.

2.5.8 Prior to issuance of 100% drawings and specifications (not “issued for bid” documents), or that portion of the drawings and specifications released to support phased construction, the Construction Manager shall complete review of the design documents and submit a written report(s) summarizing:

2.5.8.1 the proposed design,

2.5.8.2 value engineering comments that will improve the schedule,

2.5.8.3 constructability comments that will improve the schedule, cost and/or safety of the Work,

2.5.8.4 time required to procure materials, and

2.5.8.5 provide any design suggestions or recommendations, including materials of construction.

It is not the intent of this Agreement and therefore, nothing in this section or any other provision of the Contract Documents shall be construed to create any design liability or responsibility on behalf of the Construction Manager with respect to the Project’s design.

2.5.9 The Construction Manager, during the review of the design documents, shall identify all procurement items. The items identified shall be included in the Project written narrative plan and must be incorporated into the proposed schedule indicating the manufacture and delivery of items to be installed in the Work, particularly long-lead items which may impact the sequencing with activities identified in the baseline schedule, with the objective of meeting the substantial completion date.

2.5.10 The Construction Manager shall attend regular meetings with the Designer and the Airport Authority to discuss the Work, design, site, selection of materials, phasing and scheduling constraints.

2.5.11 Construction and Post-Construction Services: Following completion of the design, or a portion of design that allows the Construction Manager to proceed in a phased manner in accordance with the approved project schedule, the Airport Authority will issue a Notice To Proceed to the Construction Manager to start construction services, as provided in Article 3 of the General Terms and Conditions. Construction and Post-Construction services shall be performed in accordance with the Form of Agreement and Terms and Conditions. These services include, but are not limited to:

- .1 Prior to commencement of any Work or other activities at the Site, the Construction Manager shall deliver to the Airport Authority, with copies to each Additional Insured identified in the Contract Documents, certificates of insurance and such other evidence of insurance as the Airport Authority or any such Additional Insured may reasonably request, for all insurance which the Construction Manager is required to purchase and maintain in accordance with Article 10 of the General Terms and Conditions.
- .2 Prior to commencement of any Work or other activities at the Site, the Construction Manager shall deliver to the Airport Authority, a copy of all subcontract agreements entered into between the Construction Manager and the various subcontractors used for the performance of the Work.
- .3 Prior to commencement of any Work or other activities at the Site, the Construction Manager shall deliver to the Airport Authority the Performance and Payment Bonds in accordance with Article 10 of the General Terms and Conditions.
- .4 Prior to commencement of any Work or other activities at the Site, the Construction Manager shall deliver to the Airport Authority a site-specific health and safety plan.
- .5 Construction Manager shall be responsible for submitting project status reports as required in Section 2.7 of the Construction Services Agreement.
- .6 Construction Manager shall be responsible for managing the project schedule, updating as necessary and submitting monthly updates as required.
- .7 Construction Manager shall be responsible for contracting for all subcontractors required to complete the work, managing the day-to-day activities of the subcontractors, and self-performing any activity required, in order to complete the project by the Substantial and Final Completion Dates.

2.6 PROJECT LABOR HARMONY

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

2.7 MONTHLY PROGRESS REPORTS

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

- (a) Executive summary
- (b) Project status overview including, without limitation, the following:
 - (i) Cost control report containing sufficient data to allow the Airport Authority to monitor and control the costs so as to complete the construction within the GMP. This report must contain an accounting of the Contingency per Paragraph 8.2.1 of the General Terms and Conditions. A cash flow diagram must be included to monitor costs incurred against the project budget (the GMP) and resource loaded schedule;
 - (ii) Schedule control report containing sufficient data to allow the Airport Authority to monitor the progress of the Baseline Schedule. This report must contain a discussion of the critical path activities, and recovery plans to return the project to the approved baseline schedule;
 - (iii) Safety and loss control report;
 - (iv) Request for Information (RFI) report; and
 - (v) Submittal status report/updated submittal schedule.
- (c) Progress photographs; and
- (d) Changes and claims update including the following:
 - (i) List of outstanding Change Orders; and
 - (ii) List and status of outstanding Change Proposal requests and Contractor Change Requests, and any other potential changes, claims or disputes or other outstanding issues or information required from the Airport Authority.

2.8 CONSTRUCTION MANAGER'S ORGANIZATION AND STAFF

2.8.1 The Construction Manager shall establish an organization including lines of authority and communication as necessary to organize and direct the complete construction of the Work and carry out all requirements of the Contract. A listing of certain of the Construction Manager's key staff is set forth on **Exhibit KPS** attached hereto. Any additional key staff of the Construction Manager (i.e., staff who will have primary responsibility for a significant portion or aspect of the services to be provided by the Construction Manager under the Contract, or who are otherwise designated as key staff by the Airport Authority) shall be subject to the Airport Authority's prior written approval, and upon such approval shall be considered key staff for purposes of this Agreement. All key staff shall be available for and shall perform the responsibilities assigned to such staff throughout the construction of the Project.

2.8.2 No substitution of any assigned and approved key staff shall be made by the Construction Manager without the prior written consent of the Airport Authority. Before any such substitution is made, the Construction Manager shall submit to the Airport Authority the qualifications of any proposed replacement. The failure to provide, remove or replace, without the Airport Authority's consent, any of the key staff listed in **Exhibit KPS** (or subsequently approved), other than as a result of disability, death or bona fide retirement or termination of employment, shall constitute a material breach of the Contract.

2.8.3 The Airport Authority may require replacement of any member of the Construction Manager's key staff with or without cause, and may require increased levels of staffing by the Construction Manager, at no increase in the Contract Sum, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain the quality of the Work and progress in accordance with the Project Schedule. By executing this Agreement, the Construction Manager certifies that the Construction Manager and each member of its key staff comply with all

licensing, registration and other requirements applicable to the Construction Manager and the performance of its services hereunder pursuant to Applicable Laws. The Airport Authority shall have the right to require the Construction Manager or any Subcontractor to remove or replace any on-site personnel (whether or not designated as one of the key personnel) who violate Airport Authority policies or work rules or who the Authority otherwise finds objectionable with other personnel approved by the Airport Authority.

2.8.4 The Contractor understands that it is the policy of the Airport Authority that Disadvantaged Business Enterprises (DBEs) which are certified by a Michigan Certifying Agency should have the maximum practical opportunity to participate in the competitive process of supplying services and goods to the Airport Authority. Accordingly, for this Agreement, the Airport Authority has established a DBE goal of 14 percent (14%) of the goods or services to be provided by the Agreement. DBE participation is intended to be active DBE business participation or purchase, with commensurate risk of loss. Contractor agrees, for the term of the Agreement, to meet the goal, or in the event that the goal is not met, to document adequate good faith efforts Contractor makes to meet the goal, that is, document all necessary and reasonable steps Contractor takes to achieve the DBE goal, as required in 49 CFR Parts 23 and 26, including any amendments thereto. Contractor's failure to meet the goal or to provide the Airport Authority with sufficient documentation of Contractor's adequate good faith efforts to meet the goal will be sufficient cause for the Airport Authority to terminate this Agreement. For purposes of this Agreement, a Disadvantaged Business Enterprise is a business enterprise that meets the requirements of 49 CFR Part 23 and Part 26, and any amendments thereto.

ARTICLE 3

COMPENSATION TO THE CONSTRUCTION MANAGER

3.1 CONTRACT SUM

3.1.1 Subject to Article 8 of the General Terms and Conditions, the Airport Authority shall pay to the Construction Manager, in consideration for the Construction Manager's proper performance of the Contract and completion of the Work, and in accordance with and subject to the applicable provisions of the Contract Documents, the amounts set forth in Sections 3.1.2, 3.1.3, 3.1.4, 3.1.5, 3.1.6 and 3.1.7.

3.1.2 Pre-Construction Phase Costs – for the proper performance of the services identified as Pre-Construction Phase Services in Section 2.5 of the CMR Services Agreement, the Airport Authority agrees to pay the Construction Manager for actual costs, an amount not to exceed _____ dollars (\$_____). The payment for Pre-Construction Phase Costs will be prorated based on the percentage of Work completed during the invoice period. If this agreement is terminated, the Airport Authority agrees to reimburse the Construction Manager in accordance with the applicable provisions of Article 14 of the General Terms and Conditions. The Pre-Construction Phase Costs shall be invoiced monthly.

3.1.3 Cost of the Work – for the proper performance of the services identified as Contractors Responsibilities in Article 3 of the General Terms and Conditions, the Airport Authority agrees to pay the Construction Manager an amount not to exceed _____ dollars (\$_____) based on the unit rates included in Exhibit UNIT attached, as applied to those units of Work accepted by the Designer.

3.1.4 Construction Manager's Fee - for the proper performance of the services identified as Contractors Responsibilities in Article 3 of the General Terms and Conditions, the Airport Authority agrees to pay the Construction Manager a Manager's Fee that covers overhead, profit, and general expenses, except for costs not reimbursable, as identified in Paragraph 11.13.1 of the General Terms and Conditions. The Manager's Fee shall not exceed _____ dollars (\$_____). A portion of the Construction Manager's Fee shall be included in each pay application by multiplying the amount of work invoiced by the pay period by ____ % (_____ percent). In no case shall the aggregated amount of the portions exceed the total Construction Manager's Fee. If the Project is adjusted as provided in Article 11, the Construction Manager's Fee shall be adjusted by multiplying the change order amount by ____ % (_____ percent).

3.1.5 Construction Manager's Contingency – when conditions are discovered that cause the assumptions, listed in the Exhibit ASSM, to be incorrect, and the Construction Manager has complied with Sections 8.2.1 of the General Terms and Conditions, the Airport Authority agrees to pay the Construction Manager the amount negotiated to cover the costs associated with the condition invoking the contingency. In no event shall the Construction Manager's Contingency exceed _____ dollars (\$_____). Unused portions of the Construction Manager's Contingency will revert back to the Airport Authority at the end of the Work.

3.1.6 Airport Authority's Contingency – the Airport Authority may order work to be completed by the Construction Manager that was not contemplated at the time that the Construction Manager negotiated the GMP. The Airport Authority's Contingency is a part of the GMP, and will be used at the discretion of the Airport Authority for Work associated with the Project. In no event shall the Airport Authority's Contingency exceed _____ dollars (\$_____).

3.1.7 Guaranteed Maximum Price Cost – for the proper performance of the services identified in the Contract Documents, the Airport Authority agrees to pay the Construction Manager an amount not to exceed the negotiated GMP. The GMP is the sum of the Cost of the Work (or that portion of the Units approved for payment), the Pre-Construction Phase costs, Construction Manager's Fee, Construction Manager's Contingency, and Airport Authority's Contingency. The GMP is subject to modifications through the Change Order process provided in Article 11 of the General Terms and Conditions, and as approved by the Airport Authority. The GPM shall not exceed _____ dollars (\$_____).

3.1.8 Incentive Award Fee - for the proper performance of the services required for completing the Work, including safely completing the Work and meeting the requirements to maintain the schedule and budget milestones, the Airport Authority, at its sole discretion, may award an Incentive Fee to the Construction Manager. The Incentive Fee is calculated by dividing the remaining balance of the Construction Manager's Contingency in two, with equal portions shared between the Construction Manager and the Airport Authority. In order to receive the Incentive Award Fee, the Construction Manager must request the Fee in writing no later than five days after the effective date of Substantial Completion. The request must include sufficient supporting documentation to demonstrate the amount of Construction Manager's Contingency remaining.

3.1.9 Allowances. The Allowances listed in **Exhibit ALL [which shall be the Schedule of Values approved by the Airport Authority]** are included in the Contract Sum. Whenever the actual cost attributable to the Allowance item is more or less than the Allowance amount stated in **Exhibit ALL**, the Contract Sum shall be adjusted by Change Order in accordance with the provisions of Article 11 of the General Conditions. The amount of such Change Order shall be the difference between the costs and other amounts included in the particular Allowance item (as set forth in **Exhibit ALL**) actually incurred by the Construction Manager and the stated Allowance amount.

3.1.10 Unit Prices. Unit price items and estimated quantities therefore, which the Airport Authority and the Construction Manager used in the negotiations of the GMP, includes all costs for furnishing and installing the estimated quantity of each such item as stated, including all indirect costs, overhead, fees and profit. Subject to the provisions of Paragraph 11.8 of the General Conditions, the Contract Sum may be adjusted by Change Order based upon changes not contemplated in the Scope of Work. The unit prices specified shall be applicable to both increases and decreases in the Contract Sum on an equal basis.

3.2 CHANGES IN THE WORK

The Airport Authority may make changes in the Work when the Airport Authority considers it to be necessary or desirable, as further provided in Article 11 of the General Conditions. The Construction Manager shall be compensated on account of changes in the Work in accordance with Article 11 of the General Conditions. Notwithstanding anything herein to the contrary, all changes in the Work shall be based upon approved Change Orders prepared in accordance with the requirements of the Contract Documents.

3.3 RETAINAGE

All payments on account of the Contract Sum shall be subject to retainage as provided in Paragraph 8.3 of the General Conditions

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.1 NOTICE

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

If to the Airport Authority: Wayne County Airport Authority
Detroit Metropolitan Wayne County Airport
L.C. Smith Terminal, Mezzanine Level
Detroit, Michigan 48242
Attention: Chief Executive Officer

with a copy to:

If to the Construction Manager: _____

Invoices for payment
shall be directed to:

Wayne County Airport Authority
Detroit Metropolitan Wayne County Airport
L.C. Smith Terminal, Mezzanine Level
Detroit, Michigan 48242
Attention: Ms. Donna Whitt, CIP-Finance

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

4.2 AUTHORITY REPRESENTATIVES

No representative of the Airport Authority nor any Board Member, Director, officer, agent, consultant or employee thereof (including the Authority's Representative) shall be charged personally by the Construction Manager with any liability or held liable to it under any term or provision of the Contract, or because of its execution or attempted execution of the Contract, or because of any breach of the Contract.

4.3 EXECUTION OF COUNTERPARTS

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

4.4 EXHIBITS

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

Exhibit CD	List of Contract Documents
Exhibit SCH	Schedule Requirements
Exhibit SCD	List of Site Conditions Documents
Exhibit PA	List of Project Approvals and Other Requirements Affecting the Work
Exhibit RSP	Required Subcontract Provisions
Exhibit KPS	Key Project Staff
Exhibit ALT	Alternates
Exhibit OPT	Options
Exhibit ALL	Allowances
Exhibit UNIT	Unit Prices
Exhibit ASSUMP	List of assumptions used for the development of the GMP.

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

Witness:

Date: _____

Wayne County Airport Authority

By: _____

Lester W. Robinson
Chief Executive Officer

Date: _____

Witness:

Date: _____

Construction Manager:

[Successful Respondent]

By: _____

Date: _____

20520

**[NOTE--ALL EXHIBITS SHALL BE BASED UPON
FINAL AWARD TO THE SUCCESSFUL RESPONDENT]**

**EXHIBIT CD
LIST OF CONTRACT DOCUMENTS
[to be finalized upon contract award]**

EXHIBIT RSP
REQUIRED SUBCONTRACT PROVISIONS

Every Subcontract shall contain the following provisions:

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

Exhibit ASM

[TO BE FULLY NEGOTIATED WITH SUCCESSFUL RESPONDENT]

CONTRACTOR'S CONTINGENCY, PRE-CONSTRUCTION FEE, AND MANAGEMENT FEE

1.1.1 Contractor's Contingency – in order to arrive at the contingency amount, the Contractor, after careful review of the drawings and specifications, discussions with the Airport Authority and the Designer about the constructability of the Work, and applying the Contractor's extensive experience with the type of work required to complete the Project, established assumptions about the work where the drawings and specifications were silent. A list of all assumptions is included in the Construction Manager at Risk Form of Agreement. In consideration that the Contractor developed the Cost of Work based on drawings and specifications that were not fully complete, the Airport Authority agreed to allow the Contractor to include a contingency item in determining its Guaranteed Maximum Price (GMP). The contingency provides for all costs (materials, equipment, labor, overhead, profit, etc.) that were not contemplated by the Contractor at the time the Cost of Work was determined due to incomplete drawings and specifications, so as to ensure that the Contractor will complete the Work within the GMP. If during the course of construction, the assumption(s) are determined to be incorrect, then the Contractor may petition the Airport Authority in writing for the release of contingency money to cover the costs necessary to complete that portion of the work.

.1 An assumption is an assertion by the contractor that the work will be performed under certain conditions (assumed conditions) because the drawings are silent (i.e. the depth of the pipe was not given, or could not be inferred by the information provided in the drawings and the Contractor assumed a depth). However, if the drawings are not silent, but the Contractor discovers a condition that conflicts with the drawings or specifications, then the Contractor must follow the requirements of Section 11.5 in order to request additional compensation or time. If the Contractor discovers a condition that would qualify as a "differing site condition" the Contractor must follow the requirements of Section 11.15 of the General Terms and Conditions to request additional compensation or time.

.2 If the Contractor encounters a condition that causes the assumption to be incorrect through no fault or action of the Contractor, the Contractor must notify the Designer and the Airport Authority immediately, and provide follow-up written notice within 5 calendar days of first discovery of the condition. The follow-up writing must include the location, date, condition encountered, the applicable assumption, how the condition encountered causes the assumption to be incorrect, and assert that the writing is a notice for release of contingency.

.3 The contractor shall prepare and submit a Contractor's Contingency Proposal to the Airport Authority within 20 calendar days of the notice for release of contingency. The proposal shall include a detailed breakdown of all costs associated with completing the work affected by the incorrect assumption and certification stating that the Contractor reviewed the proposal(s) and agrees that the amount of contingency requested is correct, complete, and necessary because the Contractor, despite obligations to mitigate the costs, is unable to complete the Work item for the previous agreed unit rate. If additional time is requested by the Contractor, the Contractor must provide a Baseline Schedule analysis showing how the condition encountered impacted the overall project schedule (refer to Section 7.4). If the Airport Authority requests additional information necessary to evaluate the Contractor's proposal, the Contractor shall provide the information within 5 calendar days. Contractor's failure to provide the information within the time required will be sufficient cause for rejecting any Contingency request, unless such time is extended in writing by the Airport Authority.

.4 The Airport Authority will review the properly completed request within 5 calendar days and, if approved, notify the Contractor in writing. If the Contractor disagrees with the Airport Authority's determination, the Contractor must notify the Airport Authority in writing no later than 20-days following the date of the determination. Failure of the Contractor to provide its response within the 20-calendar day period

will be conclusively deemed as the Contractor's agreement with the Airport Authority's determination. No Contingency amount may be included in a pay application unless the Airport Authority gives approval in writing.

.2 The Designer and the Airport Authority must be given an opportunity to inspect the condition in order to validate whether an applicable assumption is incorrect. If the Contractor proceeds without notifying the Designer and the Airport Authority immediately, then the Contractor will be responsible for all costs associated with completing the Work where the assumption might otherwise have been incorrect.

.3 The Contractor must create an accounting record that will be used to control the Contingency fund. The accounting record must track the original Contingency amount, any changes to the amount authorized in writing by the Airport Authority, the date of the event, the date of notice to the Airport Authority, and date of the Contractor's Contingency Proposal, and the balance of Contingency remaining. The accounting must be included in the Monthly Report.

1.1.2 Pre-Construction Fee – The Contractor is entitled to a portion of the fee approved by the Airport Authority for Pre-Construction services. The amount of the fee to be paid will be based on a percentage of the Work completed, and provided that all required plans, schedules, reports are submitted as required as a precondition for application for payment of the fee.

1.1.3 Management Fee – The Contractor is entitled to a portion of the fee approved by the Airport Authority for Management services associated with the Work. The amount of the fee to be paid will be based on the percentage of Work completed and accepted by the Designer, and provided that all required monthly reports and schedule updates are submitted as required as a precondition for application for payment of the fee.

SECTION 11 – GENERAL TERMS AND CONDITIONS

WAYNE COUNTY AIRPORT AUTHORITY

GENERAL TERMS AND CONDITIONS

CONSTRUCTION MANAGER AT RISK

DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

ARTICLE 1

DEFINITIONS; CONTRACT DOCUMENTS

1.1 DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof. Terms used in this document which are not defined herein but are defined in the Construction Services Agreement shall have the meanings assigned therein.

1.1.1 Airport – As defined in the Construction Services Agreement.

1.1.2 Airport Authority or Authority – Wayne County Airport Authority, its successor or assigns. The Airport Authority may act directly or through its authorized representatives.

1.1.3 Authority's Representative – The person or persons identified as a representative of the Airport Authority in the Construction Services Agreement, or other person(s) or entity hereafter designated by the Airport Authority as Authority's Representative in replacement thereof.

1.1.4 Applicable Laws – As defined in Subparagraph 1.2.1.

1.1.5 Application Date – The date established by the Airport Authority on which Applications for Payment shall be submitted to the Airport Authority and the Designer.

1.1.6 Application for Payment – As defined in Paragraph 8.2.

1.1.7 The terms "approve," "approves," "approved" or "approval" mean written approval.

1.1.8 Baseline CPM Schedule – As defined in Paragraph 7.2.

1.1.9 Change Order – A written order issued by the Airport Authority and signed by the Airport Authority and the Contractor authorizing an addition to, deletion from or revision in the Work, or authorizing an adjustment in the Contract Sum or Construction Duration. Change Orders shall be issued on a form provided by the Airport Authority.

1.1.10 Contract Documents – As defined in the Construction Services Agreement, including these General Terms and Conditions ("General Conditions"), Supplementary Conditions, RFQ and its attachments, addenda to the RFQ Contractor's Response to the RFQ, Notice(s) to Proceed (if any), bonds furnished by the Contractor, Drawings, Specifications, and Modifications issued after execution of the Contract. A "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Field Order or other written order for a minor change in the Work issued by the Designer or other Designer's Supplemental Instruction. The Contract Documents include all exhibits and all other documents attached to, incorporated in or defined or identified as Contract Documents in the Construction Manager at Risk Services Agreement or other Contract Documents. The terms "Contract" and "Agreement" refer to and include all of the Contract Documents. Contract Documents do not include shop drawings, submittals, or samples provided by the Contractor to show material or equipment conformance with the plans and specifications.

1.1.11 Contract Sum or Contract Price – As defined in the Construction Manager at Risk Services Agreement.

1.1.12 Construction Duration – As defined in the Construction Manager at Risk Services Agreement.

1.1.13 Construction Manager – the party designated as the Contractor in the Construction Manager at Risk Services Agreement, who holds a direct contract with the Airport Authority, and who is liable for the completion of the Work in accordance with the construction schedule and GMP for the Work, as provided in the Contract Documents.

1.1.14 Construction Services – the services provided by the Construction Manager at risk, and as required to complete the Project.

1.1.15 Construction Services Agreement – The agreement entitled Construction Manager at Risk Services Agreement dated _____, 200____, between the Airport Authority and the Contractor.

1.1.16 Correction Period – As defined in Paragraph 12.2.

1.1.17 day; working day; business day – As defined in Subparagraph 7.1.3.

1.1.18 differing site condition(s) – As defined in Paragraph 11.15.

1.1.19 Designer – The party designated as the Architect, Engineer or Designer in the Construction Manager at Risk Services Agreement, or any other person or entity to whom any of the obligations of the Designer may be validly assigned with the Airport Authority's consent. The term "Designer" shall include the Designer's authorized representatives and consultants. References in the Contract Documents to "Architect" or "Engineer" shall be deemed to refer to the Designer.

1.1.20 Designer's Supplemental Instructions – A written order, instruction or interpretation issued by the Designer to the Contractor which orders a minor change in the Work and which, in the opinion of the Designer, does not involve an adjustment in the Contract Sum or an extension of the Construction Duration.

1.1.21 Drawings – The graphic and pictorial portions of the Contract Documents prepared by the Designer showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings.

1.1.22 Excusable Delay – As defined in Paragraph 7.4.

1.1.23 Field Order – A written order issued by the Airport Authority which orders a minor change in the Work not involving a change in the Contract Sum or Construction Duration.

1.1.24 Final Completion – As defined in Subparagraph 8.7.3.

1.1.25 Good Industry Practices – Practices, procedures, methods and standards that (i) are consistent with current practices and standards established for, or employed by, leading participants in the construction industry in the United States; (ii) comply with Applicable Laws and applicable industry insurance underwriters' requirements and fire and life safety codes and standards; and (iii) promote the highest standards of reliability, efficiency, safety and security. Good Industry Practices require, without limitation, that reasonable steps be taken to assure that sufficient personnel are employed and available to perform the Work, and that such personnel are adequately skilled, experienced and trained to construct and install the Work properly and efficiently, and that appropriate coordination, monitoring and testing is performed to assure that all elements of the Work are constructed and installed so as to function as required by the Contract Documents.

1.1.26 Hazardous Material – As defined in Paragraph 9.3.

1.1.27 Indemnitee(s) – As defined in Subparagraph 3.20.1.

1.1.28 Monthly Report or Monthly Progress Report – The Monthly Progress Report required to be furnished by the Contractor to the Airport Authority, as further provided in the Construction Manager at Risk Services Agreement.

1.1.29 Notice to Proceed – A written communication issued by the Airport Authority to the Contractor authorizing it to proceed with construction of the Work, as further provided in the Construction Manager at Risk Services Agreement.

1.1.30 Project Approvals – As defined in Paragraph 3.5.

1.1.31 Product Data – Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, assembly or system for some portion of the Work.

1.1.32 Project – As defined in the Construction Manager at Risk Services Agreement.

1.1.33 Project Schedule – As defined in Paragraph 7.2.

1.1.34 Where the words “provide” or “provided” are used in the Contract Documents, such words shall be construed to mean “furnish(ed)” and “install(ed)” and/or “connect(ed),” unless specifically stated otherwise.

1.1.35 Quality Acceptance – materials testing, under the control of the Designer, Airport Authority, or an Airport Authority representative, used to verify that the Work is performed in accordance with the Contract Documents.

1.1.36 Quality Assurance/Quality Control – materials testing, under the control of the Contractor, used to establish that the Work is performed in accordance with the Contract Documents.

1.1.37 RFI – Request For Information; a form used by the Contractor to request clarification to design, specifications or terms of the Contract.

1.1.38 RFQ – As defined in the Construction Manager at Risk Services Agreement.

1.1.39 Samples – Physical examples which illustrate materials, products, equipment or workmanship and which, when approved in accordance with the Contract Documents, establish standards by which the Work will be judged.

1.1.40 Schedule of Values – As defined in Article 8.

1.1.41 Where the words “shown” or “shown on Drawings” are used in the Specifications or other Contract Documents, such words shall be construed to include “noted,” “indicated,” “scheduled,” “detailed,” and any other diagrammatic or written reference made on any of the Contract Documents, including both Drawings and sections of the Specifications.

1.1.42 The word “site” shall mean the area or areas indicated within the contract limit lines on the Drawings or otherwise defined in the Contract Documents, together with such additional areas or locations adjacent thereto in which construction operations or work required under the Contract are being carried out in accordance herewith.

1.1.43 Shop Drawings – All drawings, prints, diagrams, illustrations, brochures, schedules and other data which are specially prepared for the Work by the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

1.1.44 Specifications – That portion of the Contract Documents consisting of written descriptions and requirements of a technical and/or procedural nature for materials, equipment, construction systems, standards and workmanship.

1.1.45 Subcontractor – A person, firm or corporation having a contract with the Contractor or with any other Subcontractor, regardless of tier, for the performance of a part of the Work at the site.

1.1.46 Substantial Completion – As defined in Subparagraph 7.1.2.

1.1.47 Substantial Completion Date – As defined in the Construction Manager at Risk Services Agreement.

1.1.48 Supplier – Any person, corporation or other entity having a contract with the Contractor, any Subcontractor or any other supplier regardless of tier, who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

1.1.49 Work – Any preconstruction services furnished by the Contractor, and all construction work and related services, as provided in or required by the Contract Documents, whether completed or partially completed, including (i) all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations, and (ii) all subcontracted work. The Work may constitute the whole or a part of the Project. The Work includes all labor, work and services necessary to produce the construction required by or reasonably inferable from the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.2 INTERPRETATION OF CONTRACT DOCUMENTS

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

1.2.2 The Contractor represents that it has examined and understands all of the Contract Documents and has visited the site, examined and familiarized itself with the local conditions under which the Work is to be performed, including labor and material market conditions and any work in progress under previously awarded contracts, verified to its satisfaction the nature and quantity of the work involved, and correlated its observations with the requirements of the Contract Documents, and the Contractor acknowledges its satisfaction with the same.

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

1.2.4 In case of inconsistency, discrepancy, conflict or error among the Contract Documents or within any of the Contract Documents with respect to design matters, the Contract Documents shall be interpreted on the basis of the priority reasonably determined by the Designer as being consistent with the overall intent of the design and required to produce the intended result. Subject to such determinations by the Designer, the Contract Documents shall be interpreted on the basis of the following priorities, the first listed having the highest priority:

- .1 Written amendments to the Construction Manager at Risk Services Agreement, the General Conditions or the Supplementary Conditions signed by both parties (those of a later date shall take precedence over those of an earlier date).
- .2 Change Orders (those of a later date shall take precedence over those of an earlier date) subject to the qualifications stated below.
- .3 Designer's Supplemental Instructions and Field Orders (those of a later date shall take precedence over those of an earlier date).
- .4 Construction Manager at Risk Services Agreement and General Terms and Conditions
- .5 Supplementary Conditions including DBE Program requirements and FAA-AIP Federal Contract Construction Provisions attached to the RFQ, including Addenda.
- .7 General and Special Provisions
- .8 Technical Specifications (Division 1 of the Specifications shall take precedence over other divisions of the Specifications). Refer to SP-10 for additional precedence of technical documents.
- .9 RFQ and Addenda (those of a later date shall take precedence over those of an earlier date) subject to the qualifications stated below.

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

1.2.5 Any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both. In the event of any duplication, conflict, inconsistency or discrepancy among or within the Drawings and the Specifications (or among or within other portions of the Contract Documents so far as the same pertain to the Drawings or the Specifications) the matter shall promptly be brought to the attention of the Airport Authority and Designer for instructions in accordance with the provisions of Subparagraph 4.1.7 below. The Contractor shall provide a copy of such notice to the Authority's Representative. If, having identified any duplication, conflict, inconsistency or discrepancy, the Contractor proceeds with the Work without instructions from the Designer, the Contractor does so at its own risk and shall be responsible for performing corrective Work at its own cost.

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

details of such adaptation shall be subject to prior approval by the Designer. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

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

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

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

The Contract Sum and the Construction Duration may only be changed by a Change Order or a written amendment. In addition, the requirements of the Contract Documents may be clarified or supplemented, and minor changes, variations, adjustments and deviations in the Work may be authorized, by Field Order, by Designer's Supplemental Instructions pursuant to Paragraph 11.18, or by Designer's approval of a Shop Drawing pursuant to Paragraph 3.9.

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

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

1.2.11 Except as provided in Paragraph 3.20 and Subparagraph 5.2.2 (or as otherwise expressly provided in the Contract Documents), the Contract Documents shall not be construed to create a contractual relationship of any kind (i) between the Designer and the Contractor, (ii) between the Airport Authority and any Subcontractor or (iii) between any persons or entities other than the Airport Authority and Contractor. Unless otherwise expressly stated in the Contract Documents, the parties do not intend that any third party shall be a beneficiary of any provision of the Contract Documents. The Contractor understands and agrees that the Designer's obligations are to the Airport Authority and, by performing those obligations properly, the Designer may increase the burdens and expenses of the Contractor, its Subcontractors, or sureties or any of them.

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

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

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

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Designer are instruments of the Designer's service through which the Work to be executed by the Contractor is described. Neither the Contractor nor any Subcontractor or Supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Designer, and, subject to the rights reserved by the Airport Authority in its agreement with the Designer, the Designer shall be deemed the author of them and will retain common law, statutory and other reserved rights, including the copyright of the Drawings and Specifications. The Contractor may retain record sets of the Drawings and Specifications. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. The Contractor shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing the Project. Further, they are not to be used by the Contractor or any Subcontractor or Supplier on other projects without the specific written consent of the Airport Authority and the Designer. The Contractor, Subcontractors and Suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Designer appropriate to and for use in dealing with governmental authorities in the ordinary course of permitting and constructing the Project, and otherwise in the execution of their work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Designer's copyright or other reserved rights. The Contractor shall require Subcontractors and Suppliers to comply with this Subparagraph 1.3.1.

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

ARTICLE 2

AIRPORT AUTHORITY

2.1 INFORMATION AND SERVICES REQUIRED OF THE AIRPORT AUTHORITY

2.1.1 The Airport Authority shall provide known legal requirements regarding this Project to the Contractor that the Airport Authority knows or has information in its possession, to the Contractor. If the Airport Authority

becomes aware of any legal requirements, or has legal requirements imposed on it by an Agency with jurisdiction, then the Airport Authority will provide the Contractor with such additional information.

2.1.2 Unless otherwise provided in the Contract Documents or the RFQ, the Airport Authority shall furnish to the Contractor surveys describing the physical characteristics, legal limitations and utility locations for the site, and a bench mark and baseline from which the Contractor shall establish grades, lines and levels necessary for the proper placement of the Work. The Contractor shall be solely responsible for verifying the exact locations of utilities on the site or serving the Project as they relate to performance of the Work.

2.1.3 The Airport Authority shall secure and pay for (i) those permits review fees and approvals, if any, identified as the Airport Authority's responsibility in the Construction Services Agreement, and (ii) all easements and other property interests required to construct the Project on the site. The Contractor shall pay for all permits, inspection fees, bonds required by the agency with jurisdiction, and close-out costs as required.

2.1.4 Information or services under the Airport Authority's control required to be provided by the Airport Authority under the Contract Documents shall be furnished by the Airport Authority with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.1.5 The Contractor will be furnished free of charge one copy of the Contract Documents.

2.1.6 The Airport Authority and its representatives may communicate informally directly with any employees or other representatives of the Contractor or any Subcontractor. The preceding sentence shall not be interpreted to authorize any Subcontractor to formally communicate with the Airport Authority, nor to create or recognize any contractual relationship between the Airport Authority and Subcontractors or any obligation of the Airport Authority with respect to Subcontractors. The Airport Authority may, but shall not be required to, forward instructions to the Contractor through the Designer. If communicated directly to the Contractor by the Airport Authority, the Airport Authority shall endeavor to provide copies of such instructions to the Designer.

2.1.7 The Airport Authority may provide information contained in or relating to this Agreement to any separate contractor, Subcontractor or Supplier to the extent deemed appropriate by the Airport Authority in relation to the proper performance of their work. The Airport Authority shall use reasonable efforts to give the Contractor prior notice of the Airport Authority's intent to provide such information, provided that such notice does not conflict with the Airport Authority's interests as determined by the Airport Authority in its sole discretion.

2.1.8 In no event shall the Airport Authority have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Airport Authority in the Contract Documents.

2.2 AIRPORT AUTHORITY'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to commence to correct and diligently pursue the correction of defective work as required by Paragraph 12.2 below or other provisions of the Contract Documents, or otherwise fails to carry out the Work in accordance with the Contract Documents, the Airport Authority may, without prejudice to any other remedy the Airport Authority may have, order the Contractor to stop the Work or any portion thereof, and the Contractor shall not thereafter incur any further cost or expense therefor without the Airport Authority's prior written approval, until the cause for such order has been eliminated; however, this right of the Airport Authority to stop the Work shall not give rise to any duty on the part of the Airport Authority to exercise this right for the benefit of the Contractor or any other person or entity. The Contractor shall have no claim for an increase in the Contract Sum or extension of the Construction Duration on account of an order by the Airport Authority to stop the Work or any portion thereof pursuant to this paragraph, unless the Contractor establishes that the Contractor was at all times in compliance with the requirements of Paragraph 12.2 below and other applicable provisions of the Contract Documents.

2.3 AIRPORT AUTHORITY'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor fails to perform the Work diligently and in a timely manner or defaults or neglects to carry out the Work in accordance with the Contract Documents or otherwise fails to perform his obligations under the Contract Documents, the Airport Authority may, without prejudice to any other remedy it may have, correct or carry out the Work or otherwise make good such deficiencies, provided, however, that the Airport Authority shall not take any action to perform the Work or to make good such deficiencies, except in the event of an emergency, unless the Contractor shall have failed, within seven (7) working days after receipt of written notice from the Airport Authority of such failure, default or neglect, to commence corrective action and thereafter to promptly and diligently pursue the corrective action to completion.

2.3.2 If the Airport Authority undertakes to carry out the Work or make good such deficiencies, the Airport Authority may take possession of the site or any portion thereof and possession and use of any and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor in order to carry out the Work or make good such deficiencies by whatever method it may deem expedient. The Airport Authority shall not be liable for any depreciation, loss or damage to such materials, equipment or tools during such use thereof. Further, if the Airport Authority undertakes to carry out the Work or make good such deficiencies, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of carrying out the Work or correcting such deficiencies, including compensation for the Designer's or other additional services made necessary by such default, neglect or failure, and the Contract Sum shall be likewise reduced. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference, with interest thereon at the rate specified in Paragraph 14.2 below, to the Airport Authority within thirty (30) days of receipt of an invoice therefor.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

3.1 CONSTRUCTION PHASE DUTIES

3.1.1 The services which the Contractor shall provide include, but are not limited to those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding other services not specifically mentioned herein. Further, certain duties described in this section, requiring the Contractor to perform, may be delegated by the Contractor to a designee (i.e. subcontractor), however the ultimate liability for failure to perform the Work in accordance with the Contract Documents resides with the Contractor. Management duties of the Contractor include managing all procurement activities, issuing and managing subcontractor's, coordinating and scheduling Quality Assurance/ Quality Control testing, updating the schedule, attending progress meetings, preparing monthly reports, and coordinating all permits and commissioning of the Work.

3.1.2 Following issuance of drawings and specifications prepared for use as the construction documents, and before starting the Work, and at frequent intervals during the progress thereof (including prior to commencement of each major element of the Work, and prior to the start of work of each Subcontractor), the Contractor shall carefully examine the site and carefully study and compare the Contract Documents with each other and with conditions at the site, including work completed or in progress under this Contract or other contracts, and with such information, documents, plans and criteria as may be available in connection with the Project and shall at once report to the Designer and the Airport Authority all conflicts, errors, ambiguities, inconsistencies, discrepancies, omissions or non-compliance with building codes or other Applicable Laws that he discovers, and the Contractor shall obtain a written interpretation of clarification from the Airport Authority before proceeding with any Work affected thereby. If the Contractor proceeds with the Work without such notice to the Designer and the Airport Authority, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents and other conditions he could have discovered the same, the Contractor shall perform

all necessary corrective work and bear all costs arising therefrom and shall have no claim for increase in the Contract Sum or extension of the Construction Duration for extra work made necessary thereby.

3.1.3 Without limitation, the Contractor, shall take field measurements and verify field conditions as necessary and shall, before commencing activities at the site, carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents and information provided by the Airport Authority pursuant to Subparagraph 2.1.1 of these General Conditions or pursuant to the Construction Services Agreement. Errors, inconsistencies or omissions discovered shall be reported promptly to the Designer and the Airport Authority using a Request For Information (RFI) document provided by the Airport Authority.

3.1.4 The Contractor shall perform the Work in accordance with Good Industry Practices and the standards established by, and other requirements of, the Contract Documents and submittals approved pursuant to Paragraph 3.9 below.

3.1.5 The Contractor shall give the Designer timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work, and the Designer shall respond within a reasonable time thereafter. The Contractor shall use a RFI document provided by the Airport Authority.

3.1.6 The Contractor shall not knowingly proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Designer as provided in Subparagraph 3.1.5. If the Contractor proceeds with such Work without obtaining additional drawings or instructions, he shall correct, at his own expense, Work incorrectly done.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor must continuously supervise and direct the Work competently and efficiently, using its best skill and attention. Except as required by permit or agency with jurisdiction, the Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible for confirming that finished Work complies with the requirements of the Contract Documents.

3.2.2 The Contractor shall employ and maintain on the Work at the site qualified and competent supervisory and administrative personnel on a full-time basis. Such personnel including but not limited to the key Project staff identified in the Construction Services Agreement and as presented in the RFQ response statement. The Site Superintendent may appoint designees to perform or assist in the performance of the Site Superintendent's duties when work is in progress in more than one area of the site and when second or third shift work is being performed, so as to ensure adequate supervision of all Work. Any such designee of the Site Superintendent must have a level of experience equivalent to the Superintendent, and must have experience as it relates to the type of construction being performed under this Contract. A Site Superintendent and the Contractor's Project Executive shall each, singly, have full authority to act on behalf of the Contractor. Designees of the Project Manager or Site Superintendent, with full authority, shall represent the Contractor in the absence of the Project Manager or the Site Superintendent, respectively. The Site Superintendent or his or her designee shall be in attendance at the site at all times (and for all shifts) during the progress of the Work until Final Completion of the Work. The Contractor shall coordinate and supervise the work of all Subcontractors to the end that the Work is carried out, with harmony and without conflict between trades, and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor's Project Manager and Site Superintendent and authorized representatives of any Subcontractors as requested by the Designer or the Airport Authority shall attend construction coordination meetings, weekly progress meetings and all other Project meetings. The Project Manager and, in his absence, the Site Superintendent shall represent the Contractor and notices or other communications given to the Project Manager or the Site Superintendent shall be as binding as if given to the Contractor directly. The Contractor shall provide the Airport Authority with the name, telephone number and mobile telephone or pager number of one or more representatives of the Contractor who shall be available 24 hours per day, seven days per week, to handle

emergencies or other problems requiring the Contractor's immediate attention. A representative must be at all times no more than one-hour travel time from the site.

3.2.3 Construction progress meetings shall be held, as often as the Airport Authority deems necessary but at least once per week, in accordance with a schedule established or approved by the Airport Authority. Such meetings shall be held at the site and shall be attended by representatives of the Airport Authority, the Designer and the Contractor. The Contractor's Site Superintendent and its Project Manager, General Superintendent or other main office representative shall attend each meeting, and such representatives shall have full authority to make binding commitments on behalf of the Contractor with respect to all matters to be discussed at such meetings. Representatives of Subcontractors shall attend such meetings when requested by the Airport Authority or the Designer. If requested by the Airport Authority, the Contractor shall schedule, conduct and prepare and circulate minutes of the meetings. Minutes of such meetings, and other Project meetings, are intended to serve as a record of discussions held, shall not be binding upon any party unless the minutes are specifically approved in writing by an authorized representative of such party, and, even if so approved, shall not serve as notice to the Airport Authority of a claim by the Contractor, nor any other notice required to be given pursuant to any provisions of the Contract Documents, nor shall progress meeting minutes constitute a written change directive or notice to proceed to the Contractor with respect to any matter reflected in such minutes.

3.2.4 The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to insure the progress of the Work in accordance with the Project Schedule. The Contractor shall be fully responsible for the acts and omissions of its employees, Subcontractors, Suppliers and its or their agents and employees, and all other persons or entities performing or supplying any of the Work.

3.2.5 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Designer, the Authority's Representative or any other Airport Authority representatives in the administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor.

3.2.6 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, grades, elevations and measurements for all of the Work, as further provided in Paragraph 3.17 below. Without limitation, the Contractor shall establish the grades, lines, levels, column, wall and partition lines required by the Subcontractors in laying out their work. The Contractor shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from its failure to do so. In the event that the Contractor shall, while laying out the Work, become aware of any conflicts between the Drawings and the Specifications, including any modifications thereof, and the actual layout of the Work, it shall promptly notify the Designer using a RFI document. If the Contractor proceeds with any work related to the conflict without receiving instructions from the Designer, he accepts the conditions as they are and at his own risk.

3.2.7 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Designer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless the Contractor has given timely notice to the Designer in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing to proceed at the Airport Authority's risk.

3.2.8 The Contractor shall be responsible for ensuring that adequate quality control programs are developed, implemented and enforced by the Contractor's staff and all Subcontractors, including maintaining an experienced

full-time quality manager, employed by the Contractor, who shall be stationed at the Project Site and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work.

3.2.9 Wherever work to be performed by a Subcontractor is dependent upon work of other Subcontractors, the Contractor shall ensure that each Subcontractor: coordinates its work with all dependent work; provides necessary dependent data and requirements; supplies and/or installs items to be built into dependent work of others; makes all necessary provisions for dependent work; examines Drawings and Specifications for dependent work; examines, checks and verifies dependent dimensions of previously placed work; notifies the Contractor (and the Contractor shall notify the Authority's Representative) of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its work; and does not proceed with its work until the unsatisfactory dependent conditions have been corrected. Installation of work by the Contractor or by a Subcontractor in any given area shall constitute acceptance of all previously placed dependent work.

3.2.10 The Divisions and Sections of the Specifications and the identification of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade. The Divisions of the Specifications are complementary, and anything mentioned or shown in a Division of the Specifications or on a specific Drawing shall be of like effect as if shown in all Divisions of the Specifications and on all Drawings.

3.2.11 If the Contractor suspends for any reason at any time any portion of the Work, prior notice shall be given to the Airport Authority of such suspension and of the resumption of such Work.

3.2.12 If the Contractor observes or determines that any work performed by the Airport Authority or by a separate contractor is not in accordance with the Contract Documents or is otherwise unsatisfactory, the Contractor shall promptly notify the Airport Authority and the Designer in writing in full detail using a RFI document.

3.2.13 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Airport Authority, the Authority's Representative or the Designer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). When such a term or adjective is used, it shall not be effective to assign to the Airport Authority, the Authority's Representative or the Designer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this paragraph.

3.2.14 If requested by the Airport Authority, the Contractor shall prepare a construction management plan or site logistics plan for review by the Airport Authority and/or by other public agencies having jurisdiction, and shall prepare any necessary amendments or supplements to such plan and, upon approval thereof, the Contractor shall perform the Work in accordance with such approved site logistics plan.

3.3 LABOR AND MATERIALS

3.3.1 The Contractor shall provide competent, suitably qualified personnel to perform all construction activities as required by the Contract Documents. Unless otherwise specified in the Contract Documents, the Contractor shall furnish at his expense and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other utilities, services, facilities and incidentals necessary for the proper furnishing, performance, testing and completion of the Work.

3.3.2 All materials and equipment shall be of first quality and new and of recent manufacture, except as otherwise expressly provided in the Contract Documents. The Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. If required by the Designer, the Contractor shall furnish written information or other satisfactory evidence (including reports of required tests or other tests or studies by qualified testing laboratories or other experts) as to the kind and quality of materials and equipment, and compliance of same with the requirements of the Contract Documents, and stating the original sources of supply of materials and products manufactured or produced at locations other than the site of the Work. All such information or other evidence shall be furnished at the Contractor's expense. In order to permit time for required inspections, testing and approvals, such information shall be furnished at least thirty days (or as otherwise directed by the Designer) in advance of the incorporation of any such materials or products in the Work. The Contractor shall make no claim for delay or extension of the Construction Duration arising directly or indirectly out of his failure to select materials or products early enough to permit a reasonable time for completion of inspections, testing or approvals, or because of the Contractor's purchase of materials or products in advance of approval. Materials or equipment delivered to the site may not be removed from the site without the written approval of the Airport Authority.

3.3.3 Reference in the Specifications or Drawings to any product, material, equipment, method or process by proprietary name, manufacturer, vendor, supplier, make or catalogue number with the phrase "or approved equal," or similar phrase, shall be interpreted as establishing a standard of quality as hereafter provided. The Contractor may in such cases propose a substitution in writing, provided that the proposed substitute item is equal or superior to that named or described in the Specifications. If the Specifications or Drawings do not expressly permit the Contractor to furnish an "equal" or an "approved equal," the Contractor shall have no right to propose a substitution. An item shall be considered equal to the item so named or described if (i) it is equal or better in quality, durability, appearance, strength and design and (ii) it will perform at least equally the functions imposed by the design for the Work. This standard is not limited to function, performance or other technical properties of the item, but also encompasses the finish, color, texture and other aesthetic qualities. The Designer shall be the judge of whether any proposed substitute product, material, equipment, process or method is equal to or better than that specified according to this standard, subject to the approval of the Airport Authority, and the decision of the Airport Authority shall be final and binding on the Contractor and any Subcontractors.

3.3.4 The Designer will consider formal requests for the substitution of products in place of those specified only under the conditions set forth in the Specifications and these General Conditions. Each Subcontractor shall be required to notify the Contractor and the Designer, not later than 15 days after award of the Subcontract, of all substitutions the Subcontractor intends to request. The Contractor shall make a written request to the Designer for each substitution clearly stating that it is a request for substitution and identifying all variations of the proposed substitute item from that specified (including, but not limited to, principles of operation, materials or construction, finish, thickness or gauge of material, dimensions, weight, tolerances, deleted and added features) and available repair and replacement service. The request shall contain an estimate of the decrease in the Contract Sum on account of the proposed substitution together with itemized estimates of increases or decreases in operating, maintenance, repair, replacement or spare part costs, all of which will be considered by the Designer and the Airport Authority in evaluating the proposed substitute. By making requests for substitutions, the Contractor:

(a) represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, and expressly warrants that such proposed substitute product will perform adequately the functions and achieve the results called for by the general design, and meets the standards set forth above;

(b) represents that it will provide the same warranties and guarantees for the substitute product that it would for that specified;

(c) certifies that all cost and savings data presented is complete and includes all related costs under this Contract but excluding costs under other contracts and excluding the Designer's redesign costs, if any, (but

separately identifying such excluded costs) and waives all claims for additional costs related to the substitution which subsequently become apparent; and

(d) will coordinate the installation of the accepted substitute, making such adjustments as may be required for the Work to be complete in all respects.

The burden of proof to substantiate that a proposed substitution meets the standards set forth in Subparagraph 3.3.3 and this Subparagraph 3.3.4 shall be the sole responsibility of the Contractor. Failure of the Contractor to furnish in a timely manner supporting information deemed necessary by the Designer to verify compliance with such standards shall be the basis for disapproval by the Designer.

3.3.5 Any additional cost, or any loss or damage arising from the substitution or proposed substitution of any material, equipment or method for those originally specified shall be borne by the Contractor, including, without limitation, costs of evaluating substitutions whether or not approved, costs of any structural, mechanical or other changes necessary to accommodate substitute materials or equipment, and costs of modifying documents and additional fees of the Designer or the Airport Authority's other consultants, notwithstanding approval or acceptance of such substitution by the Airport Authority or the Designer, unless such substitution was made at the written request or direction of the Airport Authority or the Designer. If a submittal for or including a substitution is not accompanied by a written request for substitution complying with the provisions of Subparagraph 3.3.4, then, notwithstanding that the Designer may have approved such submittal, the Designer may reject such substitute product at or after the time of installation, and the Contractor shall be responsible for any additional costs, delays or other loss or damage resulting from such rejection.

3.3.6 Where no explicit quality or standards for materials or workmanship are established for a portion of the Work, such Work is to be of good quality for the intended use and consistent with the quality of those portions of the Work for which explicit quality or standards are specified, and consistent with the quality of the construction of the Project generally.

3.3.7 The Contractor shall at all times enforce strict discipline and good order among his employees and the employees of his Subcontractors and shall not employ or permit to be employed on the Work any person who is not properly skilled in the work to be performed by him or who is otherwise unfit. Whenever the Airport Authority shall notify the Contractor in writing that any person employed on the Work is, in the Airport Authority's opinion, incompetent, disorderly or otherwise unsatisfactory, such person shall be discharged and shall not again be employed on the Work except with the consent of the Airport Authority.

3.3.8 The Contractor shall furnish labor that can and will work in harmony with all other elements of labor employed or to be employed on the Project.

3.3.9 The Contractor will not be entitled to additional compensation for Work performed outside of regular working hours, except as otherwise expressly authorized in writing by the Airport Authority prior to the performance of such overtime or premium shift work. Additional compensation for such authorized overtime or premium shift work shall be limited to the direct cost of the premium portion of such authorized overtime.

3.3.10 All materials and equipment shall be delivered, handled, stored, installed and protected to prevent damage in accordance with the best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor shall store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use, and deliver materials and equipment in ample time to facilitate inspection and tests prior to installation. The term "delivery" in reference to any item specified or indicated, includes unloading and storing with proper protection at the site. Damaged materials or equipment may be rejected.

3.3.11 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's or Supplier's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

3.3.12 The layout of mechanical and electrical systems, equipment, fixtures, piping, duct work, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevations, and detail required to avoid interferences and satisfy architectural, engineering and structural limitations are not necessarily shown. Actual layout of such Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices and specialty items of every nature related to such systems and equipment, obtain maximum headroom, provide adequate clearances as required for operation and maintenance, and provide an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare, or cause to be prepared by its Subcontractors, coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical and fire protection installations and demonstrating to the Airport Authority's and the Designer's satisfaction that the installations will comply with the preceding sentence. The Contractor shall be solely liable for any costs or delays resulting from the Contractor's failure to prepare proper coordination drawings on a timely basis. Exact locations of fixtures and outlets shall be obtained from the Designer as provided in the Contract Documents before the Work is roughed in. Work incorrectly installed without such information from the Designer, or which prevents installation of other items of Work in accordance with the Contract Documents, shall be relocated at the Contractor's expense.

3.3.13 Where the Work is to fit with or be attached to existing conditions or Work performed by others, the Contractor shall fully and completely join the Work with such conditions or other work except as otherwise specified.

3.4 CONTRACTOR'S WARRANTIES

3.4.1 The Contractor guarantees and warrants to the Airport Authority that all materials and equipment furnished under the Contract Documents will be new and of recent manufacture unless otherwise expressly required or permitted by the Contract Documents, and that all Work will be performed in accordance with Good Industry Practices and that all workmanship and completed Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective or as failing to conform to the Contract Documents, and shall be repaired, replaced or otherwise corrected by the Contractor upon request by the Airport Authority.

3.4.2 It is specifically agreed that the Contractor's warranties of materials, equipment and labor under this Paragraph 3.4 and all other warranties, guarantees, responsibilities and liabilities of the Contractor under the Contract Documents or otherwise provided under law, shall apply to products and equipment, if any, contracted for and furnished by the Airport Authority and assigned by the Airport Authority to the Contractor pursuant to the provisions of the Construction Services Agreement as fully as if such products and equipment had been purchased directly by the Contractor for incorporation in the Work. The Contractor acknowledges that it has received and approved or will carefully review and approve all information and specifications for such Authority-furnished products and equipment sufficient so as to permit the Contractor to make this agreement. Such specifications for Authority-furnished products and equipment shall be considered a part of the Contract Documents, and such Authority-furnished products and equipment, upon delivery to and acceptance by the Contractor, shall become part of the Work; provided, however, that with respect to Authority-furnished products and equipment, the Airport Authority shall only be entitled to so much of the manufacturer's warranty as may remain in effect at the time of furnishing of the product or equipment.

3.4.3 Without in any way derogating the Contractor's representations and warranties in this Paragraph 3.4 and other obligations with respect to the Work, the Contractor shall (i) obtain and preserve for the benefit of the

Airport Authority manufacturer's warranties on materials, fixtures and equipment incorporated into the Work, (ii) if requested by the Airport Authority, prepare and execute a written guarantee and warranty applicable to all phases of the Work in accordance with the provisions of this Article and all other applicable provisions of the Contract Documents pertaining to warranties and guarantees, (iii) secure and pass through to the Airport Authority written guarantees and warranties prepared in a similar manner from each Subcontractor engaged in the performance of the Work, and (iv) prior to Substantial Completion, shall deliver three (or such greater number as may be directed by the Airport Authority) complete sets of all such guarantees and warranties to the Designer or the Authority's Representative (as directed by the Airport Authority) for review. Such delivery shall constitute the Contractor's guaranty to the Airport Authority that such warranties will be performed in accordance with their terms and conditions. The Contractor hereby assigns to the Airport Authority all of the Contractor's rights and interest in all Subcontractors' and manufacturers' warranties and guaranties, and such assignment shall be deemed effective whether or not such warranties or guaranties are delivered to the Airport Authority, whether or not such warranties or guaranties expressly permit such assignment, and whether or not any further instrument specifically assigning such warranties and guaranties is executed by the Contractor. To the extent that any such Subcontractors' and manufacturers' warranties and guaranties extend beyond the period during which the Contractor's warranty is in effect, the Contractor shall actively assist the Airport Authority, as requested by the Airport Authority and without additional charge, in enforcing any such warranties or guaranties. Nothing contained in this Paragraph 3.4 or elsewhere in the Contract Documents shall be interpreted to limit, reduce or waive any manufacturers' warranties. Unless otherwise stated in the Specifications, all specified warranty periods shall commence upon Substantial Completion of the Work.

3.4.4 The establishment of a correction period pursuant to Paragraph 12.2 (or other provisions of the Contract Documents) shall not limit the Contractor's liability for defective or non-conforming Work, whether or not discovered during such correction period.

3.4.5 Any defects must be cured at the latest upon receipt of a written notice or request to do so by the Airport Authority, and such corrective work shall be performed in a manner which shall not substantially restrict use of the facility. The Contractor shall, in addition to the actual cost of repair or replacement, be liable for all costs directly associated with the curing of such defect, and shall restore the site to proper condition following such cure at its own cost. Any parts that are replaced shall revert to the ownership of the Contractor and shall be promptly removed by the Contractor.

3.4.6 If an interruption in the operation or use of any portion of the Project is caused by a defect or the correction thereof, the warranty period for such portion of the Work shall be extended by a period equal to the length of the interruption of operation or use.

3.4.7 In the event that any work is performed to correct, repair or remedy any portion of the Work pursuant to any warranty or guarantee provided under the Contract Documents or otherwise available to the Airport Authority, all such work, and all materials, equipment, supplies, appliances, fixtures and specialty devices requiring replacement pursuant to the Contractor's warranty under this Paragraph 3.4 or during any extended warranty period or Correction Period specified in the Contract Documents, shall be subject to a supplementary guarantee and warranty extending the warranty period or Correction Period to cover all such work and all such items for the full warranty period or Correction Period specified in the Contract Documents (but not more than two years beyond the original warranty period or Correction Period), beginning as of the date of acceptance of each such replacement item or element of work.

3.4.8 If parts which fall under the scope of the warranty obligations under this Contract are changed or replaced by the Airport Authority using existing reserve or spare parts inventories, such inventories shall be replaced by the Contractor at no cost to the Airport Authority.

3.4.9 In the event the Contractor fails or refuses to repair, replace or otherwise cure defective work as required by the terms of this Paragraph 3.4 within a reasonable period of time, or if urgency exists in an individual case, the Airport Authority is entitled, at its discretion, to perform the necessary repair, replacement or other corrective

work itself or using other contractors, in which case all costs associated therewith shall be reimbursed by the Contractor to the Airport Authority. The warranty obligations of the Contractor shall not be affected thereby except in the event that the work is not properly executed by the Airport Authority.

3.4.10 The warranty and guarantee provisions of this Paragraph 3.4 shall be in addition to and not in limitation of the provisions of Paragraph 12.2 or any other warranties, guarantees or remedies provided by law or the Contract Documents.

3.4.11 The Airport Authority shall have the right to assign portions or all of its rights in connection with the Contractor's warranties to third parties. Such third parties shall, following such an assignment, be entitled to make warranty claims directly against the Contractor.

3.5 PERMITS AND FEES; COMPLIANCE WITH LAW; TAXES

3.5.1 Except for those Project permits and approvals for which the Airport Authority is responsible as provided in the Construction Manager at Risk Services Agreement, the Contractor shall secure and pay for all governmental permits, licenses, approvals and consents of any kind which must be obtained in connection with the construction, use and occupancy of the Work ("Project Approvals"), including but not limited to, all demolition permits, construction or building permits, utility inspection and connection fees, soil erosion and sedimentation control permits and inspection fees, other inspections and certificates of inspection, and all governmental fees or charges (including, without limitation, microfilming charges), necessary for the proper execution, completion and use of the Work, and including permits for temporary occupancy or obstruction of or projection into, over or under public streets and sidewalks and other public ways, curb-cut permits, and notifications to and permits or approvals from public agencies necessary in connection with demolition, waste disposal and construction. Fees for issuance of the building permit(s) for the Project will be waived where the Airport Authority has jurisdiction or paid directly by the Contractor. The Contractor shall promptly deliver to the Airport Authority copies of all Project Approvals obtained by the Contractor, and satisfactory evidence that disposal of all waste material in connection with the Project is done in full compliance with Applicable Laws as a condition precedent to requesting the final pay application.

3.5.2 All applications, requests, appeals, filings and other documents, materials and information prepared by the Contractor to be submitted to governmental authorities in connection with Project Approvals shall be subject to the prior approval of the Airport Authority, and shall be delivered to the Airport Authority sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of the Airport Authority and its consultants if applicable. If requested by the Airport Authority at any time, any such documents or materials to be used in connection with Project Approvals may be prepared by the Airport Authority or others designated by the Airport Authority, who may appear on behalf of the Airport Authority at any hearing, presentation or conference. The Contractor shall promptly complete and provide such other documentation as may be required by the Airport Authority, any regulatory agencies or other public agencies or such other parties as the Airport Authority may indicate. The Airport Authority and the Contractor shall agree upon a reasonable procedure to handle normal and customary inspections of the Work by governmental officials during the progress thereof.

3.5.3 The Contractor shall not use, occupy or obstruct, nor permit any Subcontractor or any other person performing the Work to use, occupy or obstruct, any lands or areas outside of the legal limits of the site, unless written permission in form and substance satisfactory to the Airport Authority has been obtained by the Contractor at the Contractor's sole cost. The Contractor shall arrange for and provide at its expense all police details required to be present at or adjacent to the site for traffic control purposes.

3.5.4 The Contractor shall give all notices required by and shall otherwise comply with all Applicable Laws and lawful orders of any public authority bearing on the performance of the Work including, without limitation, (i) applicable provisions of the Michigan State Building Code, (ii) applicable federal, state and local environmental laws, and (iii) applicable local, state and federal laws, ordinances and regulations governing noise pollution and abatement, dust control, employment and safety.

3.5.5 If the Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, and without notice to the Designer and the Airport Authority, the Contractor shall assume full responsibility therefor and shall bear all costs of correction thereof and other costs, including any costs or damages sustained by the Airport Authority, attributable thereto. No time extension requests will be considered under these conditions.

3.5.6 The Contractor shall pay all sales, consumer, use and similar taxes for or on account of the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6 UTILITIES

3.6.1 The Drawings and Specifications indicate all pipes, conduits, lines or other structures, facilities or equipment of public and private utility companies ("utility equipment") at and adjacent to the site of which the Airport Authority is aware. However, neither the Airport Authority nor the Designer make any representation or warranty that the utility equipment shown on the Drawings or referred to in the Specifications is the only utility equipment that may be encountered. Prior to commencing work, the Contractor shall to the extent reasonably possible confirm the existence and location of all utility equipment and shall, during the course of the Work, make diligent and continuous efforts to confirm the locations of all utility equipment at and adjacent to the site. The Contractor shall promptly notify the Airport Authority and the Designer in writing using the RFI document provided by the Airport Authority, prior to commencing affected portions of the Work, of any utility equipment that he discovers and that has not been identified on the Drawings. The Contractor shall make necessary arrangements with utility companies or utility owners for the protection, alteration or relocation of utility equipment necessary in connection with performance of the Work, and shall notify and receive affirmative clearance from all municipal departments, owners, and utility companies concerned of the time and location of any work which may affect them. If the Contractor proceeds with any work without affirmative clearance, as required to locate and protect utilities, he accepts the conditions that are encountered at the site. The Contractor shall be responsible for all costs and all claims, damages and liabilities arising directly or indirectly from any damage to utility equipment or any intentional or unintentional interruption of service occurring in connection with the Work or other operations of the Contractor.

3.6.2 The Contractor shall perform the Work so as not to interfere with utility companies or municipal departments that may enter on the site to make changes in utility equipment or to place new utility equipment, and the Contractor shall have no claim for or on account of any delay which may be due to or result from such work of utility companies or municipal departments.

3.6.3 The Contractor shall comply with the notice provisions and all other requirements of the MissDig program for Michigan, and shall be liable for all fines, penalties, claims and liabilities arising from a failure to comply therewith.

3.7 ALLOWANCES

3.7.1 The Contract Sum includes all allowances stated in the Contract Documents. Items covered by allowances shall be supplied in such quantities and by such persons or entities as the Airport Authority may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.7.2 Unless otherwise provided in the Contract Documents, (i) the allowance shall cover only the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, and (ii) the Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses related to the allowance shall be included in other applicable line items in the Schedule of Values and not in the allowance.

3.7.3 Whenever the cost of any item covered by an allowance is more or less than the applicable allowance amount, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall

reflect only the difference between the actual cost of the item and the applicable allowance amount, without markup or charge for overhead, profit or otherwise.

3.8 DOCUMENTS AND SAMPLES AT THE SITE

3.8.1 The Contractor shall maintain at the site in a safe place (i) one record copy of all Drawings, Specifications, Change Orders, Designer's Supplemental Instructions, Request for Information, Field Orders, other graphic or written instructions, interpretations and clarifications, and all other Contract Documents, complete and in good order, (ii) a "paste-up" set of the Drawings and Specifications marked currently (at least weekly) to record all changes made during construction, responses to RFIs, etc., (iii) all approved Shop Drawings, Product Data and Samples, (iv) copies of all building codes and public safety and other specialty codes and regulations applicable to the Work, (v) all Project Approvals, inspection reports and certificates obtained as required by Paragraph 3.5, (vi) all Subcontracts, material orders and other purchase orders, (vii) all of the Contractor's cost and accounting records with respect to the Project, whether relating to the Contractor or to any of its Subcontractors, (viii) copies of the Baseline CPM Schedule and other applicable schedule documentation and the updated Schedule of Values, (ix) copies of the Contractor's detailed daily logs of all events occurring on the site or connected with the progress of the Work, each including a listing of manpower by Subcontractor, weather conditions and the names and purpose of all visitors to the site. All of such documentation and information shall be available to the Designer or the Airport Authority at all times for reference and shall be delivered to the Airport Authority upon completion of the Work. Copies of the Contractor's daily logs shall be delivered to the Authority's Representative weekly. Portions of such documentation and information may be stored or maintained at off-site locations if approved in advance by the Airport Authority. To the extent not delivered to the Airport Authority upon completion, such documentation and information and other items shall be retained by the Contractor for a period of six years after the date of final payment.

3.8.2 The Contractor shall also keep at the site at all times a separate and complete set of blackline prints of the Drawings and Specifications, approved Shop Drawings and coordination drawings on which shall be noted neatly, accurately and promptly, as the Work progresses: (a) the progress of the Work installed by coloring in all pipe lines, ducts and apparatus as constructed or installed, (b) the actual installed locations of all equipment, fixtures, piping, duct work, conduit, valves, switches, strainers and other control devices and specialty items, (c) all revisions to the plumbing, electrical, HVAC work and other work, wherever such work is installed other than exactly as shown on the Drawings (or the approved Shop Drawings or coordination drawings) or as described in the Specifications (with approval as required pursuant to the Contract Documents), (d) the coordinates and elevations of all subsurface utilities installed or encountered by the Contractor which are not indicated in the Contract Documents and the inverts and rim elevations of utility structures installed by the Contractor, (e) the actual installed locations of piles, caissons, pile caps and other concealed foundation elements, and (f) all approved revisions to structural details which differ from the approved Shop Drawings. The Contractor shall be responsible for assuring that the progress of the Work and the actual installed locations and revisions as specified above are delineated by the specific trades involved. The record as-built Drawings shall be prepared and maintained in red line format. The Airport Authority and the Designer shall have access to such record as-built Drawings at all times.

3.8.3 Failure to maintain record as-built Drawings as required by Subparagraph 3.8.2 may result in withholding of progress payments to the Contractor. Final payment to each Subcontractor shall not be due and payable until the Subcontractor has furnished to the Contractor complete record as-built Drawings in accordance with Subparagraph 3.8.2 for all of the Subcontractor's work. The Contractor shall deliver to the Airport Authority, as a condition precedent to Final Completion of the Work and final payment, a complete and accurate set of record as-built Drawings for the entire Work, including three sets of blackline prints and one set of CAD format drawings. Furnishing of the Record Drawings will be carried on the punchlist with a value determined appropriate by the Designer and the Airport Authority.

3.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.9.1 The Contractor shall prepare or review, approve and submit to the Designer, sufficiently in advance and in such sequence as to cause no delay in the Work or in the work of the Airport Authority or any separate contractor, all Shop Drawings, Product Data and Samples or other submittals required by the Contract Documents. The Contractor shall deliver copies of all Shop Drawings, Product Data and Samples or other submittals, and all re-submittals, corrections and changes in any submittals, to the Designer. The Airport Authority may request that other consultants or staff of the Airport Authority review any or all submittals in connection with the Project. In such event, the Contractor shall cooperate with and provide for such review by such other parties in the same manner as provided in this Paragraph 3.9 with regard to review of submittals by the Designer. Copies of submittals provided to the Authority's Representative or such other parties as provided herein shall be in addition to the multiple copies to be provided to the Designer as provided below. All provisions contained in this Paragraph 3.9 or elsewhere in the Contract Documents concerning the form and content of submittals shall apply with respect to the copies of submittals to be provided to the Authority's Representative or such other parties unless otherwise instructed.

3.9.2 Within five (5) days after the date that drawings and specifications are issued for construction purposes, or that portion of construction documents applicable to phased construction, the Contractor shall submit to the Airport Authority and the Designer a preliminary schedule of submittals. The Contractor shall then meet with the Airport Authority and the Designer to discuss the schedule of submittals and shall prepare and promptly submit (in accordance with any time periods provided elsewhere in the Contract Documents) for approval a final schedule of submittals for the Work. The schedule of submittals shall contain a Shop Drawing schedule and a Sample schedule.

3.9.3 The schedule of submittals shall list all of the submissions required of each trade; the item, description, type, quantity and size (where applicable) of each submission; and the following dates, as estimated:

- .1 Required date of submission.
- .2 Required date of approval.
- .3 Estimated date of beginning fabrication or manufacture of product (where applicable).
- .4 Required date of submission of product to testing laboratory.
- .5 Required date of testing laboratory approval.
- .6 Required date for delivery of product to site.
- .7 Required date for beginning of installation of product.

The schedule shall allow adequate time for review by the Designer or the Airport Authority and their consultants, not less than any time periods specified elsewhere in the Contract Documents, including time for anticipated resubmittal(s) as necessary prior to fabrication. The Airport Authority or the Designer will not be responsible for Work performed in shop or field prior to approval. Long-lead items requiring expedited action shall be clearly indicated. The schedule shall be reviewed and resubmitted as necessary to conform to approved modifications to the Project Schedule, and shall be updated as may be required by the Airport Authority or the Designer. Submissions shall be made in accordance with the approved schedule of submittals; any time periods for review of submissions by the Designer shall not be applicable to any submission not submitted in accordance with the approved schedule of submittals.

3.9.4 The Contractor shall submit one clear and legible reproducible copy and one black-line print of each Shop Drawing, with as many additional prints as the Designer may request. Drawings shall be rolled in mailing tubes, not folded. The Contractor shall submit five (5) copies of manufacturer's Product Data unless otherwise instructed by the Designer. Each submission shall be accompanied by a transmittal form in a format determined by the Designer.

3.9.5 Samples shall be identified by a permanent label giving the manufacturer's name, trade name, material type, intended application, project name, project number, control number, Contractor's name, Subcontractor's or

Supplier's name and date of submission. Manufacturer's installation directions shall be provided with each Sample. Each submission shall be accompanied by a transmittal form in a format determined by the Designer. The Contractor shall prepay all transportation costs and deliver Samples to the Designer's office, site or testing laboratory as directed by the Designer. Samples will be kept until Substantial Completion and will not thereafter be returned unless return is requested at the time of submission; all packing and transportation costs for the return of Samples shall be paid by the Contractor.

3.9.6 Samples shall be of adequate size to permit proper evaluation of the material by the Designer. Where variations in color, texture, dimensions or other characteristics are to be expected, the Contractor shall submit samples showing the maximum range of variation. Materials exceeding the range of variation of the approved Samples shall not be used on the Work.

3.9.7 If both Shop Drawings and Product Data or Samples are required for the same item, the Designer may require both to be submitted before approving either.

3.9.8 The Contractor's review of Shop Drawings, Product Data and Samples shall include, without limitation, verification of the following:

- .1 Proper title, original date, drawing number (which shall not be changed on resubmitted drawings), revision numbers and dates, designation of Project (name and CIP number), Contractor, Subcontractor and/or Supplier.
- .2 Identification of Shop Drawings, Product Data or Samples by Specification section and subsection or paragraph where appropriate and identification of Contract Drawings by number and detail.
- .3 Coordination with work of other trades.

3.9.9 By preparing or approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor thereby represents that it has verified the items referred to in Subparagraph 3.9.8 above, and has determined and verified all materials, requirements for the implementation of the Work, dimensions, quantities, field measurements, details, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples or similar submittals and compliance with all the requirements of the Contract Documents. If requested by the Airport Authority or the Designer, the foregoing representations shall be repeated in full on each submittal as part of the Contractor's approval stamp. The accuracy and completeness of all such information is the responsibility of the Contractor. Approval by the Contractor shall be clearly indicated on each submittal, in ink or by stamp, and signed or initialed by the Contractor. Shop Drawings and other submissions which have not been reviewed and approved by the Contractor in accordance with the requirements stated in this Paragraph 3.9 and the Specifications shall be returned to the Contractor with no action taken by the Designer. Such submissions shall be re-submitted to the Designer with the Contractor's review and approval provided as required. Language contained in the Contractor's approval of submittals shall not be interpreted to limit in any respect or otherwise affect the Contractor's responsibilities and liabilities hereunder.

3.9.10 The Designer shall review the Contractor's submittals to determine whether such submittals conform with the design concept and intent of the Project and with the information contained in the Contract Documents. If corrections are required, a full set of copies of duplicate parts or corrected drawings shall be submitted to the Designer for approval, and this procedure shall be followed until final approval has been given.

3.9.11 The Contractor shall maintain a Shop Drawing schedule which shall contain all information necessary to expedite the preparation, review and approval of Shop Drawings. If the Designer has not responded to any Shop Drawing in accordance with the approved schedule of submittals, the Contractor shall notify the Airport Authority and the Designer in writing. In no event shall the Contractor be entitled to an extension of the Construction Duration on account of failure of the Designer to timely respond to properly submitted Shop Drawings or other

submittals unless such written notice has first been provided to the Airport Authority and the Designer and the Designer fails to respond to the Shop Drawing or other submittal within a reasonable time thereafter.

3.9.12 If Shop Drawings submitted by the Contractor indicate a deviation from the requirements of the Contract Documents, the Contractor shall specifically inform the Designer in writing of such deviation at the time of submission. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Designer's approval of Shop Drawings, Product Data or Samples, unless the Contractor has specifically informed the Designer in writing of such deviation at the time of submission and the Designer has given written approval of the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Designer's approval thereof. Shop Drawings shall be submitted for complete systems. The Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.9.13 If Shop Drawings submitted by the Contractor indicate a deviation from the Contract Documents, and the Designer considers such deviation to be acceptable and in the best interests of the Project (and not involving a change in the Contract Sum or an extension of the Construction Duration), the Designer may approve the Shop Drawings including such deviation, but such approval shall be subject to the understanding, hereby incorporated in each such approval given, that the deviation approved or ordered does not involve any change in the Contract Sum or the Construction Duration, and is subject to all provisions of, and is approved without prejudice to any rights of the Airport Authority under, the Contract Documents.

3.9.14 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Designer on previous submittals. Unless such written notice has been given, the Designer's approval of a resubmitted Shop Drawing, Product Data or Sample shall not constitute approval of any changes not requested by the Designer on the prior submittal.

3.9.15 No Shop Drawing, Product Data or Sample shall be issued to the field, except for "information only" Shop Drawings, Product Data or Samples, without the Designer's approval stamp affixed thereto. No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be installed until the submittal has been so approved by the Designer, unless such requirement is waived by the Airport Authority in writing. All such portions of the Work shall be constructed and completed strictly in accordance with the approved submittals.

3.9.16 No acceptance or approval of any Shop Drawing, Product Data or Sample, nor any indication or request marked by the Designer on any Shop Drawing shall constitute an authorization for any increase in the Contract Sum. Any claim by the Contractor for such an increase must be made in accordance with applicable provisions of the Contract Documents.

3.10 SITE

3.10.1 The right of possession of the site and the improvements made thereon by the Contractor shall remain at all times with the Airport Authority. The Contractor's right to entry and use thereof arises solely from the permission granted by the Airport Authority under the Contract Documents. Contractor's use of the site is solely for the exclusive purpose of this Work and shall not use the site for any other project of the Contractor. The Contractor shall confine his apparatus and equipment, storage of materials, and all operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the directions of the Airport Authority, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall keep vehicular ways, driveways, roads, sidewalks, corridors, exits and other access ways and passageways clear of debris, stored material or equipment so that passage is not impeded, and at all times shall provide for safe and open egress from areas and buildings under construction. The site shall, at all times, be maintained in a safe and orderly condition.

3.10.2 Notwithstanding the designation of site limits or the indication of temporary fences, walls or barricades, the provisions of the Contract Documents governing certain phases or portions of the Work may require that certain operations be carried out beyond such designated limits. Trenching, protection, shoring, utility work, landscape or streetscape improvements, and any other Work, if required beyond such designated limits, shall be

scheduled in such a manner as to cause a minimum of inconvenience or disturbance to or interference with the normal operations of the Airport Authority, abutters and the public. The Contractor shall obtain the Airport Authority's prior approval and all necessary approvals from abutters, public authorities and utility companies for such operations, prosecute such operations expeditiously and restore the affected area to its original condition immediately upon completion of such operations, unless otherwise specified in the Contract Documents.

3.10.3 Neither the Contractor nor any Subcontractor, Supplier or other person for whom the Contractor is responsible shall, without the Airport Authority's prior written consent, install or maintain any sign, trademark, advertisement, or other identification symbol in or about the site. The Airport Authority shall have the right, without notice to the Contractor and at the Contractor's expense, to remove any sign, trademark, advertisement or other identification symbol installed in violation of this Subparagraph 3.10.3.

3.10.4 Subject to the Airport Authority's approval, the Contractor shall provide and maintain in passable condition at all times such roads, driveways, parking and storage areas as may be required on the site for delivery and storage of materials, removal of rubbish, and storage and maintenance of equipment. Use of temporary roads, parking and storage areas shall be discontinued when directed by the Airport Authority. All existing walks, roadways, paved or landscaped areas over which temporary driveways or walks are rerouted, or which are otherwise damaged or altered, shall be restored to their original condition immediately upon completion of the related phases or portions of the Work, unless otherwise specified in the Contract Documents.

3.10.5 The Contractor and any Subcontractors who require field offices on the site shall provide their own, and shall maintain same and remove same when directed. Field offices shall be located where directed or approved, and shall be maintained in neat and orderly condition throughout the term of the Contract.

3.10.6 The Contractor shall furnish Project signage as directed by the Airport Authority, all costs of which are included in the Contract Sum.

3.10.7 The Airport Authority and its representatives, the Designer and representatives of governmental agencies, shall have the right to enter the site at any time. The Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the Airport Authority, the Designer, and its or their representatives or government representatives in order that they may accomplish the purpose of their visit to the site.

3.10.8 The Contractor shall not load, or permit to be loaded, any part of any structure with a weight that will endanger its safety or the safety of personnel operating in or around the premises.

3.10.9 The Contractor shall make all practicable efforts to control dust, including periodic sprinkling of work areas, travel areas, debris stockpiles and other areas on the site. Stockpiles and debris in removal vehicles shall be covered with tarpaulins. A dust control plan shall be submitted for approval by the Designer prior to commencing the Work.

3.10.10 The Contractor shall be responsible for all de-watering, pumping, draining, control of surface and ground water, and proper disposal of water produced from those activities, in connection with the Work; such activities shall be carried out so as to avoid endangering the Work or any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

3.11 CUTTING AND PATCHING OF WORK

3.11.1 The Contractor shall be responsible for all cutting and patching, as approved by the Designer and the Authority's Representative, necessary for the completion of the Work. The Contractor shall coordinate the installation, locations and dimensions of all sleeves, anchors, dowels, inserts, chases and similar requirements for the Work of all trades and Subcontractors involved; shall have all sleeves, anchors, etc., ready to place at the proper time, when forms of concrete are being fabricated, prior to placing concrete, and when masonry walls are being constructed. In case sleeves or hangers are not placed in time, or are improperly placed, the Contractor shall be responsible for forming or drilling openings in the Work where required and for any patching or corrective

work necessary. All fabricated elements which require sleeves, anchors, inserts, etc., shall have such items indicated on Shop Drawings. The Contractor shall coordinate the Shop Drawings between the various trades and Subcontractors involved.

3.11.2 All cutting shall be done promptly and all repairs shall be made as necessary to leave the entire Work in good condition, including all cutting, fitting and drilling of masonry, concrete, metal, wood, plaster, and other materials as specified or required for proper assembly, fabrication, installation and completion of the Work under the Contract Documents, and including any patching as may be necessary. Cutting and patching shall be performed in a manner so that the minimum amount of cutting is performed and so that materials shall be replaced or patched with like materials, finishes shall match existing finishes, and all other surfaces shall match existing surfaces.

3.11.3 Cutting inside occupied areas shall be done with care so as to ensure the safety of persons and property adjacent to and below the area being cut. Cutting with a torch shall only be allowed following approval of the Airport Authority. Cutting that exposes indoor areas to outside conditions shall be temporarily protected to prevent water intrusion.

3.11.4 Structural elements shall not be cut, patched or otherwise altered or repaired without the prior written authorization of the Designer and the Airport Authority. Work done without or contrary to such authorization is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract Documents.

3.11.5 The Contractor shall not damage or endanger any portion of the Work or the work of the Airport Authority or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Airport Authority or any separate contractor except with the written consent of the Airport Authority and of such separate contractor. The Contractor shall not unreasonably withhold from the Airport Authority or any separate contractor its consent to cutting or otherwise altering the Work.

3.12 WEATHER PROTECTION

3.12.1 The Contractor shall provide temporary enclosures, heat and other weather protection as necessary for proper performance of the Work. "Weather protection" shall mean the temporary protection of all portions of the Work that may be adversely affected by moisture, wind and cold, by covering, enclosing and/or heating. Such protection shall provide adequate working areas and conditions as required by the Specifications and as determined by the Airport Authority and the Designer and consistent with the Project Schedule to permit the continuous progress of all work necessary to maintain an orderly and efficient sequence of construction operations. This Paragraph 3.12 does not supersede any general or specific requirements for methods of construction, curing of materials or other applicable requirements set forth in the Specifications or other Contract Documents. All costs of weather protection are included in the Contract Sum.

3.12.2 Installation of heating devices and other weather protection shall comply with all safety regulations including provisions for adequate ventilation and fire protection devices. Heating devices which may cause damage to finish surfaces or other work shall not be used.

3.13 CLEANING

3.13.1 The Project and the site shall be maintained in a neat and orderly condition and kept free from accumulation of waste materials and rubbish during the entire construction period. The Contractor shall be responsible for the removal of all crates, cartons and other combustible or flammable waste materials or trash from the work areas regardless of cause at the end of each working day or at such other more frequent intervals as required to maintain the site in a safe, orderly and sanitary condition. The Contractor shall be responsible for the removal of all soil, rocks, waste and trash from public roads and private property, resulting from spills from the Contractor's and all subcontractor's vehicles, at the end of each working day or at such other more frequent

intervals as required to maintain public and private areas in a safe condition. If the Project and site are not maintained properly, the Airport Authority may have any accumulations of waste materials or trash removed and charge the cost to the Contractor. Elevator shafts, electrical closets, pipe and duct shafts, chases, furred spaces and similar spaces which are generally unfinished, shall be cleaned and left free from rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt and dust.

3.13.2 At the Substantial Completion of the Work, the Contractor shall remove all waste materials and rubbish from and about the site as well as all tools, construction equipment, machinery and surplus materials, and shall leave the site in a neat and clean condition satisfactory to the Airport Authority. Immediately prior to the Designer's and Airport Authority's inspection for Substantial Completion of the Work, or any portion thereof approved by the Airport Authority, as provided in Paragraph 8.6 below, the Contractor shall completely clean all portions of the area to be inspected. Without limitation, if the Work includes one or more buildings, all concrete and ceramic surfaces shall be cleaned and washed; resilient floors and coverings shall be cleaned, waxed and buffed; woodwork shall be dusted and cleaned; sash, fixtures, and equipment shall be thoroughly cleaned; stains, spots, dust, marks and smears shall be removed from all surfaces; painted surfaces shall be touched up; hardware and all metal surfaces shall be cleaned and polished and glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. Windows shall be cleaned both inside and outside. All damaged, broken and scratched glass and plastic shall be replaced by the Contractor at the Contractor's expense.

3.13.3 If the Airport Authority elects to take occupancy of specific areas or portions of the Work prior to the completion and acceptance of the entire Work as provided in Article 13, the Contractor shall carry out final cleaning operations as herein specified in such specific areas or portions of the Work prior to occupancy thereof, as directed by the Airport Authority or the Designer. The Contractor shall remove or relocate, when appropriate, all surplus materials, equipment, supplies, construction plant, equipment and facilities as required in order to permit the occupancy and utilization of such specific areas or portions of the Work.

3.13.4 If the Contractor fails to clean up at the completion of the Work, the Airport Authority may do so as provided in Paragraph 2.3 and the cost thereof shall, at the Airport Authority's election, either be charged directly to the Contractor or the Contract Sum shall be reduced accordingly.

3.14 COMMUNICATIONS

3.14.1 Copies of all communications from the Contractor to the Designer shall be provided simultaneously to the Airport Authority.

3.14.2 The Contractor shall provide simultaneously to the Designer any communications which the Contractor gives to the Airport Authority or any of the Authority's Representatives relating to the Drawings, Specifications or any modifications thereto.

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

3.15 ROYALTIES AND PATENTS

3.15.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent or trademark, or violation of any copyright, proprietary right, right of privacy or any similar right protected by any law affecting intellectual property ("intellectual property right") arising out of or relating to the use of methods, processes or information, or products or other materials or property, in connection with performance of the Contract by the Contractor, any Subcontractor or others for whom the Contractor is or becomes responsible, and shall indemnify and save the Airport Authority and the other Indemnitees harmless from Liabilities on account thereof, except that the Contractor shall not be responsible for such Liabilities when a particular design, process, method, or the product of a particular manufacturer or manufacturers is specified,

unless the Contractor has reason to believe that the design, process, method or product specified is an infringement or violation of an intellectual property right, in which event the Contractor shall be responsible for such Liabilities unless he promptly gives such information to the Designer.

3.16 CONTRACTOR'S FINANCIAL CONDITION

3.16.1 The Contractor warrants that its financial condition is sound and that the Contractor is capable of obtaining any bonds or increase in bond amounts now or hereafter required pursuant to the Contract Documents. Upon request by the Airport Authority, the Contractor shall make available to the Airport Authority such audited and unaudited financial statements of the Contractor as the Airport Authority may reasonably request. The Contractor shall promptly advise the Airport Authority of any occurrence, event, fact, or other matter that has had, will have, or might reasonably be expected to have a material adverse effect upon the financial condition of the Contractor or its ability to properly perform the Contract.

3.17 LINES AND GRADES; SURVEY

3.17.1 The Contractor shall engage a professional engineer or land surveyor registered or licensed in the State of Michigan, acceptable to the Airport Authority and the Designer, to establish and plainly mark such points, lines and grades as are necessary to assure that locations, orientation and elevations established for each structure or element of the Work are in accordance with lines and elevations shown on the Drawings.

3.17.2 After new subsurface and above-grade walls or other elements are in place, the Contractor shall arrange for and pay all expenses in connection with a wall check by such registered land surveyor or professional engineer, who shall certify to the Airport Authority as to their location and accuracy in accordance with the Drawings.

3.17.3 During the progress of the Work the Contractor shall verify that lines and grades meet the requirements of the Drawings and Specifications. Such verification shall be provided by the registered land surveyor or professional engineer who shall record actual as-built lines and grades on the Record Drawings.

3.17.4 Stone bounds and other bounds, monuments and landmarks, including any benchmarks established for the Project, affected by construction operations shall not be altered or removed without the prior written consent of the Designer. When such consent has been given, each such bound, monument or landmark shall be carefully removed, stored, cared for and subsequently reset, in a manner directed by the Designer, to the depths and in the locations ordered. No such bounds, monuments or landmarks shall be removed until the Contractor has notified the Designer in advance so as to allow the Designer sufficient time to make necessary measurements before their removal.

3.17.5 The Contractor shall, from time to time, furnish to the Airport Authority surveys certified by the registered professional engineer or land surveyor, in such form as may be required by the Airport Authority, of the location of all improvements and utilities on the site.

3.18 PROGRESS PHOTOGRAPHS

3.18.1 The Contractor shall submit to the Airport Authority, with the Contractor's Monthly Report, a set of progress photographs including four area shots (four different views of each area of construction or as directed by the Authority's Representative) of the site. Submittal of progress photographs shall be a condition precedent to the Airport Authority's obligation to make payments on account of the applicable monthly requisition. Progress photographs shall be taken using digital technology, and shall be furnished to the Airport Authority in both hard copy print and electronic format. Prints shall be not less than 8" x 10" in size, clear and sharp, and each shall be labeled with the name of the Project, the Contractor's name, the date on which it was taken and the view that is illustrated or point from which it was taken. Progress photographs must be taken within the one week period immediately preceding the date established in the Contract Documents for submittal of the Contractor's Monthly

Report. If the Contractor (or Subcontractors) take video images of the site or progress of construction, copies of such video images shall be furnished to the Airport Authority with the Contractor's Monthly Report.

3.19 OPERATING AND MAINTENANCE MANUALS; TRAINING

3.19.1 The Contractor shall prepare and deliver to the Designer four copies (or such greater number may be requested by the Airport Authority) of all operating and maintenance manuals for the Project. The manuals shall contain full information for each item of mechanical, electrical or other operating equipment, copies of warranties therefore, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves. The Contractor shall obtain and include in the manuals reduced scale photocopies of the final, as-built electrical, HVAC, mechanical and plumbing Record Drawings referred to in Subparagraph 3.8.3. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be bound in three-ring binders with tabbed sections and a table of contents. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves. The operating and maintenance manuals shall be submitted to the Airport Authority and the Designer in advance in draft form, allowing sufficient time for review and comment. The Contractor shall make revisions to the manuals as necessary to address the comments received, and the final manuals (number of copies as directed by the Airport Authority) shall be delivered to the Airport Authority prior to, and as a condition precedent to, final payment.

3.19.2 The Contractor shall arrange for instruction for the Airport Authority's employees and representatives (or others designated by the Airport Authority) in accordance with all specific requirements identified in the Contract Documents and so as to insure proper operation of all equipment furnished. The Contractor and, in particular, the fire protection, ventilating and electrical Subcontractors shall not assume that the Airport Authority's employees (or such other persons) possess special expertise or have had any previous experience whatsoever in the operation and maintenance of the equipment. It is the intent of this Subparagraph 3.19.2 to require the Contractor and the applicable Subcontractors to furnish as much detailed instruction as is required by the Contract Documents to educate reasonably intelligent personnel in the proper use of the equipment. This instruction shall be provided by the manufacturer's representative for each item of equipment. In some cases, this may require several visits to the Project by those responsible for the instruction.

3.20 CONTRACTOR'S INDEMNITY

3.20.1 The Contractor shall indemnify, defend, keep and save harmless the Airport Authority, the Airport Authority's consultants, the Designer, the Designer's consultants, and such other parties as are identified in the Contract Documents or of which notice is given to the Contractor, and their respective board members, principals, directors, officers, representatives, agents and employees, in both individual and official capacities (collectively, "Indemnitees"), against all suits, actions, causes of action, legal or administrative proceedings, claims, damages, judgments, decrees, losses, expenses, penalties, fines, fees, and other costs and liabilities (collectively, "Liabilities") caused by, arising out of or resulting from the following, each to the full extent allowed by the laws of the State of Michigan and not beyond any extent that would render these provisions void or unenforceable:

- .1 breach or default under or failure to perform or comply with the terms of this Contract by the Contractor, any Subcontractor or others for whom the Contractor is or becomes responsible (referred to in this section collectively as the "Contractor");
- .2 negligent acts or omissions of the Contractor in connection with performance of the Contract as otherwise relating to the Work;
- .3 violation or alleged violation of Applicable Laws by the Contractor in connection with performance of the Contract or otherwise relating to the Work;
- .4 violation of or noncompliance with the conditions of any Project Approvals by the Contractor;
- .5 failure by the Contractor to pay any federal, state or local taxes based upon gross receipts, income, purchases, rentals or sales, the use of any property, unemployment or disability insurance, or any

- other social security or social benefit taxes applicable to employees of the Contractor, any Subcontractor or others for whom the Contractor is or becomes responsible, or any other taxes imposed in connection with the Contract or the Work;
- .6 personal injury, sickness, emotional distress, disease or death directly or indirectly caused by, arising out of, resulting from or incidental to the performance of the Contract or otherwise relating to the Work or any act or omission of the Contractor;
 - .7 loss or damage to any property of the Contractor, and loss or damage to any property of Subcontractors, Suppliers, workers and others performing under the Contract;
 - .8 claims by Subcontractors or others against the Contractor or the Airport Authority on account of amounts due or claimed to be due to such Subcontractors or others in connection with the performance of the Work;
 - .9 loss or damage to property owned/operated by the Airport Authority or third parties located on or about the site, or elsewhere within the Airport, in whole or in part arising out of, resulting from or incidental to the performance of the Work or any acts or omissions of the Contractor;
 - .10 release or threatened release of Hazardous Material which was (i) brought onto the site by the Contractor or generated in connection with the Work, or (ii) negligently stored, used, removed, handled or disposed of by the Contractor, regardless of the source, origin or method of deposit of such Hazardous Material;
 - .11 claim or assertion by any separate contractor of disruption, delay or loss caused by interference or hindrance by the Contractor of the progress or completion of work being performed by such separate contractor, or failure of the Contractor to cooperate reasonably with such separate contractors; and
 - .12 failure by the Contractor to construct the Work within the building lines established in the Contract Documents, or any encroachment by any element or portion of the Work, or any part or projection thereof, on adjoining land or facilities if such encroachment results from the Contractor's failure to construct the Work within said building lines.

Such agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity which would otherwise exist as to any Indemnitee described in this Paragraph 3.20. Liabilities shall include all expenses incurred by the Indemnitees in the negotiation, defense, settlement or satisfaction of any claims or proceedings brought thereon, regardless of the validity thereof, including attorneys' fees and expenses.

3.20.2 Provisions of this Paragraph 3.20 shall be for the benefit of each Indemnitee with the same force and effect as if each individual Indemnitee were in privity of contract with the Contractor, and each Indemnitee shall have the right to bring a direct action against the Contractor to enforce this indemnity. Each Indemnitee is hereby made a third party beneficiary of the Contract with respect to the provisions of this Paragraph 3.20.

3.20.3 The Contractor's indemnification obligation under this Paragraph 3.20 shall not be limited in any respect by any legal limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.20.4 With respect to any Liabilities of a type not covered by insurance required to be provided hereunder or otherwise carried by the Airport Authority or the Contractor, the Contractor's indemnity obligation under this Contract shall not extend to any loss or damage to the extent caused by the negligence of an Indemnitee. Accordingly, if any such Liability (of a type not covered by insurance) involves a claim of comparative or contributory negligence of an Indemnitee, all legal fees and expenses incurred in defending such claim, and any loss or damage determined to be payable as a result of the occurrence giving rise to the Liability (by settlement, judgment or otherwise) shall be apportioned between or among the responsible parties based upon relative degrees of fault, except in the instance of gross negligence or willful misconduct of the Contractor (in which case the Contractor's indemnity shall be absolute and complete and not reduced by the comparative or contributory negligence of an Indemnitee).

3.20.5 If the Contractor has acknowledged its indemnification obligation with respect to a particular claim in accordance with the terms hereof, the Contractor shall assume, at its sole cost and expense, the defense of such claim. Counsel selected for such defense shall be reasonably acceptable to the Indemnatee, and the Indemnatee shall be entitled to participate in (but not control) such defense through its own counsel and at its own expense; provided that if the counsel selected by the Contractor advises that, due to actual or potential conflicts, separate counsel should represent the Indemnatee, the expense of such separate counsel shall be an indemnified expense in accordance with the terms hereof. If the Contractor does not acknowledge its indemnification obligation for a particular claim, or does not timely assume the defense thereof, the Indemnatee may defend such claim in such manner as it may deem appropriate. The Contractor shall be responsible for paying the Indemnitees, on a current basis, for all legal fees and expenses incurred by the Indemnatee in defending such claim within thirty (30) days of billing therefor. Notwithstanding its control of a defense, the Contractor shall not (i) make any admission or take any other action that is binding on, or otherwise attributable to any Indemnatee, or (ii) consent to any settlement, entry of judgment, or other disposition, in all instances without the prior written consent of the affected Indemnatee.

3.20.6 The parties understand and agree that the provisions of this Paragraph 3.20 shall be broadly construed to accomplish the purpose of protecting the Airport Authority and the other Indemnitees from any loss or liability for any of the causes enumerated herein. Any vagueness, ambiguity or inconsistency in the application of the various provisions of this Paragraph 3.20 shall be resolved accordingly. Indemnification shall apply irrespective of the date of the assertion of any claim against an Indemnatee and/or whether the Indemnatee suffers or incurs any loss or liability before or after Final Completion. The indemnification obligations of the Contractor under the Contract shall survive the termination or expiration of the Contract.

3.20.7 The obligations of the Contractor under this Paragraph 3.20 shall not extend to the professional liability of the Designer, its agents or employees, arising out of the performance of the Designer's obligations under the Contract Documents.

3.21 PUBLIC INFORMATION

3.21.1 The Contractor shall assist the Airport Authority as requested with respect to dissemination of information concerning the Project to the public, including participation and assistance in connection with presentations and briefings to and meetings and events with government officials, community groups and other interested parties (including tours of the construction site), responding to requests for information, responding to community and public agency concerns, providing copies of graphics, photographs or other materials and maintaining records of all inquiries and other contacts from the public.

3.22 CONTRACTING ACTIVITIES

3.22.1 The Contractor shall comply with the Wayne County Airport Authority Ethics Ordinance, to the extent applicable.

3.22.2 The Contractor shall generally comply with the Wayne County Airport Authority Procurement Ordinance, to the extent applicable to obtaining subcontractor bids.

3.23 COMMISSIONING OF BUILDING SYSTEMS

3.23.1 The Contractor shall coordinate with and assist the Airport Authority and any third party commissioning agent engaged by the Airport Authority, to properly plan and perform all commissioning activities so as to ensure that all mechanical, electrical, plumbing and other building systems and equipment are made fully and efficiently operational and functioning properly.

3.23.2 Without limitation, no additional charge shall be made by the Contractor for attending meetings at the site to diagnose problems or to instruct the Airport Authority's personnel in the proper operation or maintenance of the Work or for making initial or seasonal adjustments (not including normal maintenance) of mechanical systems

or other Work during the applicable warranty periods. The Contractor shall provide such service promptly upon request from the Airport Authority. In case of emergency, service shall be provided as necessary to avoid loss or damage or to maintain normal use of the premises.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 DESIGNER

4.1.1 The Designer will assist the Airport Authority in the administration of the Contract as provided in the Contract Documents. The Designer may act directly or through its properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

4.1.2 The Designer will be a representative of the Airport Authority during construction of the Work, and will advise and consult with the Airport Authority as to the performance and progress of construction. The Airport Authority may communicate with the Contractor through the Designer or directly. The Airport Authority will endeavor to furnish to the Designer copies of any direct communications from the Airport Authority to the Contractor. The Designer will have authority to act on behalf of the Airport Authority only to the extent provided in the Contract Documents.

4.1.3 The Designer will visit the site at intervals appropriate to the stage of construction as may be required to become generally familiar with the progress and quality of the Work and to determine whether the Work is proceeding in accordance with the Contract Documents. On the basis of its on-site observations as a design professional, the Designer will keep the Airport Authority informed of the progress and quality of the Work, and will endeavor to guard the Airport Authority against defects and deficiencies in the Work of the Contractor.

4.1.4 Neither the Designer nor any representatives of the Airport Authority will have control or charge of or be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor will they be responsible for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

4.1.5 The Designer and its representatives and consultants, the Airport Authority and its other agents, employees, representatives and consultants shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide safe and proper facilities for such access and for observation and inspection of the Work. The Designer's site representatives shall have no authority to:

- (i) authorize deviations from the Contract Documents, other than Designer's Supplemental Instructions;
- (ii) waive or modify any terms or conditions of the Contract Documents;
- (iii) approve substitute products, materials or equipment except as expressly authorized in writing by the Airport Authority; or
- (iv) accept on behalf of the Airport Authority any notice required or permitted by the Contract Documents.

4.1.6 Based on the Designer's and the Airport Authority's observations and evaluations of the Contractor's Applications for Payment, the Designer and the Authority's Representative will determine the amounts owing to the Contractor and will either issue Certificates for Payment in such amounts as the Designer and the Authority's Representative determine properly due or take such other action as is provided in Paragraph 8.4.

4.1.7 The Designer will, if requested in writing using a RFI form, interpret the requirements of the Contract Documents or evaluate the performance thereunder by the Contractor. The Designer will render, in writing, Designer's Supplemental Instructions and other interpretations, decisions and approvals necessary for the proper

execution or progress of the Work, with reasonable promptness. The Designer shall notify the Contractor in cases where a decision or response will require extended investigation or study. Either party to the Contract may request such interpretations from the Designer by giving written notice of such request to the Designer with a copy thereof given to the other party, or the Designer may initiate such Designer's Supplemental Instructions or other interpretations. A request for interpretation or additional information concerning the Contract Documents shall be on a RFI document prepared or approved by the Designer and shall include a reasonably detailed written statement that indicates the specific Drawings or Specifications in need of clarification or interpretation and the nature of the clarification or interpretation requested. The Designer will, as it judges necessary or desirable, respond to the RFI or issue as a part of such Designer's Supplemental Instructions additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work, and provided such Designer's Supplemental Instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such Designer's Supplemental Instructions without increase in the Contract Sum or extension of the Construction Duration. In the case of requests for interpretation of the Contract Documents from the Contractor, the Contractor shall submit such requests to the Designer on a RFI document with a copy to the Authority's Representative. If the Contractor believes that a change in the Work has occurred by reason of Designer's Supplemental Instructions or other interpretation or decision of the Designer hereunder, the Contractor shall give notice and submit a Contractor Change Request as provided in Subparagraph 11.5.2 below.

4.1.8 Interpretations and decisions of the Designer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in written or graphic form. Such interpretations and decisions of the Designer will be binding on the Contractor unless the Contractor makes a claim as provided in the Contract Documents.

4.1.9 If requested by the Airport Authority, the Designer shall render recommendations or initial decisions on claims, disputes or other matters in question between the Airport Authority and Contractor.

4.1.10 All materials and all portions of the Work shall be subject to observation and inspection by the Designer and the Airport Authority. The Designer will have authority to reject Work which does not conform to the Contract Documents, subject to the approval of the Airport Authority. The Designer and the Authority's representatives shall be furnished with such information and assistance (including, without limitation, labor, tools, equipment and transportation) by and at the expense of the Contractor as is required to perform their construction administration obligations. Whenever the Designer considers it necessary or advisable for the implementation of the intent of the Contract Documents, it will have authority to require special inspection or testing of portions of the Work in accordance with Paragraph 4.2 whether or not such work be then fabricated, installed or completed. However, neither the Designer's authority to act under this Subparagraph 4.1.10, nor any decision made by it in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Designer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

4.1.11 The Designer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of determining conformance with the design concept and intent of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness, while allowing sufficient time in the Designer's professional judgment to permit adequate review.

4.1.12 The Designer will prepare or assist in the preparation of Change Orders in accordance with Article 11, and will have authority to issue Designer's Supplemental Instructions for minor changes in the Work as provided in Paragraph 11.18.

4.1.13 The Designer, together with the Airport Authority as provided in Paragraphs 8.6 and 8.7, will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Airport Authority for the Airport Authority's review written guarantees, warranties and related documents

required by the Contract Documents and assembled by the Contractor, will, together with the Authority's Representative, issue a final Certificate for Payment upon compliance with the requirements of Paragraph 8.7, and will prepare and issue certificates with respect to punchlists of unsatisfactory or incomplete items, all subject to the approval of the Airport Authority as provided in the Contract Documents.

4.1.14 In case of termination of the employment of the Designer, the Airport Authority shall appoint another designer whose status under the Contract Documents shall be that of the former Designer.

4.2 TESTS AND INSPECTION

4.2.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by Applicable laws shall be made at an appropriate time. With the exception of testing and inspection services specified in the Contract Documents to be performed by or at the expense of the Contractor, the Airport Authority will retain and, except as provided in Subparagraphs 4.2.3, 4.2.4, 4.2.10, 4.2.11 and 4.2.12 below, pay for the services of testing laboratories or agencies to perform such Quality Acceptance tests and render such services as may be required to verify that the Work fulfills the requirements and intent of the Contract Documents. Such services will be performed in a manner consistent with the requirements of the various agencies having jurisdiction over the Work and in accordance with reasonable standards of industry practice. Unless otherwise provided in the Contract Documents, the Contractor shall coordinate and make all arrangements for such tests, inspections and approvals with the Airport Authority's independent testing laboratory, or with the appropriate public authority, and shall bear all costs related to such arrangements and coordination. The Contractor shall give the Airport Authority and the Designer timely notice of when and where tests and inspections are to be made so that representatives of the Airport Authority or the Designer may observe such procedures, provided that neither the Airport Authority nor the Designer shall have any obligation to observe any tests or inspections unless expressly so provided in the Contract Documents. The Airport Authority reserves the right to modify the scope of or re-allocate any of the testing and inspection services specified in the Contract Documents to be performed by a testing laboratory retained by the Airport Authority, provided such adjustment in scope is consistent with the intent of the Contract Documents. In the event the Contractor shall not concur with such modification of scope or re-allocation of such services, it shall notify the Airport Authority in writing within five (5) days.

4.2.2 If the Designer, the Airport Authority or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not referred to in Subparagraph 4.2.1 above, the Airport Authority or the Designer, upon written authorization from the Airport Authority, will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Airport Authority, or to provide access to the Airport Authority or other contractors or consultants of the Airport Authority to perform such additional testing, inspection or approval, and the Contractor shall give timely notice to the Airport Authority and the Designer of when and where such additional tests and inspections are to be made so the Airport Authority and the Designer may observe such procedures. The Airport Authority shall bear the costs of such additional tests and inspections except as provided in Subparagraphs 4.2.3, 4.2.4, 4.2.10, 4.2.11 and 4.2.12 below.

4.2.3 If any inspection or testing undertaken pursuant to this Paragraph 4.2 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply (i) with the requirements of the Contract Documents, or (ii) with Applicable Laws respecting performance of the Work, then the Airport Authority or the Designer, with prior written approval of the Airport Authority, shall have the authority to order inspection or testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may in its reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs of such testing or inspection, including the Designer's or Airport Authority's consultants' additional services, if any, made necessary thereby. Neither the Designer's nor the Airport Authority's authority to act under this Paragraph 4.2, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Designer or the Airport Authority to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

4.2.4 If any testing, inspections or approvals under Subparagraphs 4.2.1, 4.2.2 or 4.2.3 reveal failure of portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Designer's and Airport Authority's consultants' services and expenses.

4.2.5 Without limitation of any other provisions of this Paragraph 4.2, if the results of testing or inspections performed by two independent testing agencies indicate that any material, equipment or other element of the Work fails to comply with the requirements of the Contract Documents, the Airport Authority may deem such material, equipment or other element to be defective and the Airport Authority shall have the right to reject such elements of the Work as provided in Paragraph 12.2 below, stop the Work or portions thereof as provided in Paragraph 2.2 above, or exercise any other right or remedy available to the Airport Authority on account of defective work, regardless of whether any additional or subsequent tests or inspections indicate that such material, equipment or other element so deemed to be defective may not be defective or may comply with the requirements of the Contract Documents; and the Contractor shall have no claim for an increase in the Contract Sum or extension of the Construction Duration on account of or arising out of the exercise of such rights and remedies by the Airport Authority.

4.2.6 The Contractor shall obtain and deliver promptly to the Airport Authority and the Designer any use or occupancy permit or any certificates of final inspection of any part of the Work and operating permits for any mechanical apparatus which may be required by law to permit full use and occupancy of the Project by the Airport Authority. Receipt of such permits or certificates by the Airport Authority and the Designer shall be a condition precedent to Substantial Completion of the Work.

4.2.7 Copies of reports issued as a result of services performed pursuant to the provisions of this Article will be distributed by the Contractor promptly to the Airport Authority and the Designer.

4.2.8 If the Airport Authority or the Designer are to observe tests, inspections or approvals required by the Contract Documents, the Airport Authority or the Designer will do so promptly and, where practicable, at the normal place of testing.

4.2.9 In connection with testing and inspection services performed by the Airport Authority's independent testing laboratory or otherwise at the expense of the Airport Authority, the Contractor shall provide samples of materials or elements of the Work required as test specimens and shall provide incidental labor and facilities at the site reasonably required in support of such services.

4.2.10 The cost of testing and inspection services required solely for the convenience of the Contractor in its scheduling and performance of the Work shall be borne by the Contractor.

4.2.11 The cost of testing and inspection services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

4.2.12 If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by the Contractor or any agent of the Contractor, it is the opinion of the Designer or the Airport Authority that the Contractor or said agent has failed to perform such work in a satisfactory manner, the Contractor shall, at its own expense, retain the services of a separate testing laboratory or service organization which is satisfactory to the Airport Authority and the Designer for the performance of such work. If the work originally performed by the Contractor or its agent is found to have been performed in a satisfactory manner, the Airport Authority shall reimburse the Contractor for its out-of-pocket costs for such separate testing or service organization.

4.3 DISPUTES

4.3.1 Prior to final payment, all claims, disputes and other matters in question between the Contractor and the Airport Authority relating to the execution or progress of the Work or the interpretation of the Contract Documents, which cannot be resolved by agreement between them, shall be resolved as provided in Article 15.

ARTICLE 5

SUBCONTRACTORS

5.1 SUBCONTRACTS

5.1.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Airport Authority information to identify all subcontractors for the Work. Such information shall include the name, address, owner(s) name and office address, and DBE status. The Contractor must notifying the Airport Authority in writing prior to adding, removing, or replacing any subcontractor.

5.1.2 The Contractor shall maintain and distribute to the Airport Authority and the Designer a Project Directory listing the names, addresses, telephone numbers and e-mail addresses of the principal members of the staff of each Subcontractor. The principal contact and a back-up for each Subcontractor and each of their home telephone numbers, mobile telephone numbers and pager numbers, if available, shall be indicated in the Project Directory so that such persons can be reached in emergency situations occurring beyond regular business hours. The Contractor shall update the Project Directory each time the Contractor adds, removes, or replaces subcontractors no later than five days after the Contractor takes such action.

5.1.3 The Contractor shall not contract with any subcontractor to whom the Airport Authority or Designer, with the Airport Authority's approval makes reasonable and timely objection. If a subcontractor proposed by the Contractor but rejected by the Airport Authority is reasonably capable of performing the Work, through a demonstration of available equipment, manpower, financial soundness, ability to procure materials, ability to provide and maintain insurance and bonds, and is not in default to the Airport Authority, the Contract Sum shall be increased or decreased, as applicable, by the difference, if any, between the subcontract price of the subcontractor proposed by the Contractor and the subcontract price of the subcontractor designated by the Airport Authority for award of the subcontract, and an appropriate Change Order shall be issued before commencement of the substitute subcontractor's work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable and timely objection. The Contractor shall make no substitution for any subcontractor previously selected if the Airport Authority makes objection to such substitution.

5.2 SUBCONTRACT AGREEMENTS

5.2.1 Each contract between the Contractor and the selected Subcontractor ("Subcontract") shall be in writing, and shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities (including without limitation the responsibility for safety of the Subcontractor's Work) which the Contractor, by the Contract Documents, assumes toward the Airport Authority. Each Subcontract shall preserve and protect the rights of the Airport Authority 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, and shall allow to the Subcontractor, unless specifically provided otherwise in the Subcontract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Airport Authority. The Contractor shall require each Subcontractor to enter into similar agreements with its Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of a Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.2, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Subcontractors.

5.2.2 Each Subcontract or other agreement between the Contractor and a Subcontractor or Supplier shall contain provisions whereby the Subcontractor or Supplier waives all rights against the Airport Authority, the Contractor, the Designer, the Designer's consultants and other consultants and contractors engaged by the Airport Authority for or in connection with any loss or damage, however caused, to property owned by the Subcontractor

or Supplier, including but not limited to materials and equipment owned by such Subcontractor or Supplier, whether or not to be incorporated into the Work. If the insurers on any policies of property insurance maintained by the Airport Authority or by the Contractor and covering or applicable to the Work require separate waiver forms to be signed by any Subcontractor, or Supplier, the Contractor will obtain the same.

5.2.3 Each Subcontract shall provide that in the event of termination of the Contract for any reason, the Airport Authority shall have the right (but shall have no obligation) to assume, and/or to assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under the Subcontract. In the event of such assumption or assignment by the Airport Authority, the Subcontractor shall have no claim against the Airport Authority or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Airport Authority or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption.

5.2.4 Any approval by the Airport Authority of a Subcontract or other agreement between the Contractor and any Subcontractor or other third party for the furnishing or supply of any labor, materials or equipment in the performance of the Work shall in no way affect the Contractor's obligations to the Airport Authority or the Airport Authority's rights under the Contract Documents. The Contractor's form of subcontract agreement shall be consistent with the provisions of **Exhibit RSP** to the Construction Services Agreement. The form of subcontract will be subject to review by the Airport Authority upon request. No material revisions shall be made to any subcontract or other agreement approved by the Airport Authority without the prior approval of the Airport Authority, and copies of all executed Subcontracts and amendments thereto shall be provided to the Airport Authority promptly.

5.3 CONTRACTOR'S RESPONSIBILITY

5.3.1 The Contractor shall be fully responsible to the Airport Authority and the Designer for all acts and omissions of its Subcontractors (regardless of tier), Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor to the same extent as the Contractor is responsible for its own acts and omissions and the acts and omissions of its employees. Except as provided in Subparagraph 5.2.3, nothing in the Contract Documents shall be construed to create any contractual relationship between the Airport Authority or the Designer and any such Subcontractor, Supplier or other persons or organization, nor shall the Contract Documents create any obligation on the part of the Airport Authority or the Designer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, or any other responsibility or liability to such Subcontractor, Supplier or other person or organization, except as may be required by Applicable Laws.

5.3.2 The Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Designer through the Contractor.

ARTICLE 6

OTHER WORK

6.1 AIRPORT AUTHORITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 In addition to the construction of the Work, the Airport Authority may perform other work forming a part of or related to the Project at the site with its own forces or award separate contracts for such work or other work on or adjacent to the site under these or other conditions of the contract. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to the Contractor prior to

commencement of such other work. If the Contractor believes that performance of such other work not noted in the Contract Documents will cause the Contractor to suffer or incur delay or additional cost, the Contractor may make a claim therefor in accordance with applicable provisions of the Contract Documents.

6.1.2 If after commencement of construction of the Work, the plans of the Contractor and any such separate contractors performing work in connection with the Project, or other contractors, are inconsistent with respect to methods, scheduling, progress or otherwise, the Contractor shall promptly notify the Airport Authority and the Designer of any such inconsistency and the matter of such inconsistency shall be resolved by the Airport Authority, and the Contractor shall proceed in accordance with the Airport Authority's decision. The Contractor shall have no claim against the Airport Authority arising out of any determination of the Airport Authority regarding any such matter.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall provide the Airport Authority and separate contractors proper and safe access to the site and a reasonable opportunity for the delivery and storage of materials and equipment and the execution of their work, and for reasonable access to, and use of, the Contractor's hoisting facilities, if provided, and temporary electric, water, sanitary and other facilities, upon terms and conditions mutually acceptable to the Contractor and such separate contractors. Disputes arising with respect to delivery or storage of materials or equipment, or otherwise relating to coordination of the Work under this Contract with the work of separate contractors shall initially be submitted to the Authority's Representative. Recognizing the constraints imposed upon the Contractor by the requirements of this Subparagraph 6.2.1, the Airport Authority agrees to give the Contractor as much advance notice as is practicable of the particular needs of separate contractors for access to the site and joint use of the site and site facilities so as to minimize the impacts upon the Contractor's scheduling and operations. The Contractor shall cooperate with the Airport Authority and separate contractors, and require and enforce the cooperation of its Subcontractors in such manner as to permit the expeditious, efficient completion of the Project as a whole and completion of specific parts of the Project for early use or occupancy by the Airport Authority in accordance with the Project Schedule.

6.2.2 If any portion of the Contractor's Work depends for proper execution or results upon work of the Airport Authority or any such separate contractors, the Contractor shall, prior to proceeding with that portion of the Work, inspect and promptly report to the Airport Authority and the Designer in writing any delays, discrepancies or defects in such other work discoverable as a result of prudent examination, testing and observation by the Contractor that render such other work unavailable or unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that such other work is fit and proper to receive the Contractor's Work, except as to defects not so discoverable. Wherever Work to be performed is dependent upon the work of others, the Contractor shall coordinate the Work with the dependent work; provide necessary dependent data and requirements; supply and/or install items to be built into dependent work; make provisions for dependent work; check and verify dependent dimensions of previously placed work; notify the Airport Authority of previously placed dependent work or dependent dimensions which are unsatisfactory or prevent satisfactory installation of the Work; and not proceed with the Work until the unsatisfactory dependent conditions have been corrected. Installation of Work by the Contractor or any Subcontractor in any given area shall constitute acceptance by the Contractor and the Subcontractor of all previously placed dependent work. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering that work, and will only cut or alter such work of others with the written approval of the Airport Authority and those whose work will be affected.

6.2.3 Costs caused by delays or by improperly timed, defective or nonconforming work shall be borne by the party responsible therefor. The Contractor shall reimburse the Airport Authority for any amounts paid or payable by the Airport Authority to a separate contractor arising out of delays, improperly timed activities or defective construction of the Contractor. The Airport Authority shall not be responsible to the Contractor for costs incurred by the Contractor arising out of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 Should the Contractor cause damage to work or property of the Airport Authority, or to other work at the site, the Contractor shall promptly remedy such damage.

6.2.5 If a dispute arises between the Contractor and separate contractors as to their respective responsibilities for cleaning up as required by Paragraph 3.13, the Airport Authority may clean up and charge the cost thereof to the parties responsible therefor as determined by the Airport Authority.

ARTICLE 7

TIME

7.1 DEFINITIONS

7.1.1 The Construction Duration is the period of time stated in the Construction Manager at Risk Services Agreement for Substantial Completion of the Work or designated portion thereof, including adjustments thereto approved by the Airport Authority as provided in the Contract Documents.

7.1.2 The date of "Substantial Completion" of the Work or designated portion thereof is the date certified by the Designer and approved by the Airport Authority when (i) the requirements of this Subparagraph 7.1.2 and Paragraph 8.6, and any special requirements provided in the Construction Services Agreement have been satisfied, (ii) construction is sufficiently complete, in accordance with the Contract Documents, so the Airport Authority can legally use or occupy the Project or designated portion thereof for the use for which it is intended and only minor items, which have no material effect upon the use, function or value of the Project, remain to be completed, (iii) any Work remaining to be completed will not interfere with the Airport Authority's use and occupancy of the Project, and (iv) the Contractor has obtained a temporary or permanent certificate of inspection, use or occupancy for the Project or designated portion thereof and temporary or permanent operating permits for any mechanical systems or apparatus which may be required by law to permit full use and occupancy of the completed Project. In the event that the Contractor is unable to obtain a certificate of inspection, use or occupancy due to the fault of the Airport Authority or the Designer, or other Excusable Delay, and if all conditions and requirements for Substantial Completion provided in the Contract Documents other than the obtaining of such certificate of inspection, use or occupancy have been satisfied, then, at the Airport Authority's option, either: (a) for purposes of establishing the date of Substantial Completion, the certificate of inspection, use or occupancy shall be deemed to have been obtained on the date on which it would have been obtained by the Contractor but for the fault of the Airport Authority or the Designer, or such other Excusable Delay, or (b) the Contractor shall be entitled to an extension of the Construction Duration on account of the delay in obtaining the certificate of inspection, use or occupancy due to the fault of the Airport Authority or the Designer or such other Excusable Delay.

7.1.3 Periods of time within which the Contractor or the Airport Authority or any other party is required to act under the provisions of the Contract Documents when described in terms of "days" shall, unless otherwise specified, mean calendar days (and not working days), except that if the last day of any such time period falls on a Saturday, Sunday or legal holiday in Michigan, the period of time during which the required action must be taken will be extended to the next following working day. The terms "working day" and "business day" shall mean any calendar day except Saturdays, Sundays, and legal holidays at the place of the Project.

7.2 PROJECT SCHEDULE

7.2.1 In accordance with Paragraph 2.5.5 of the CMR Service Agreement, the Contractor shall (i) furnish to the Airport Authority a full detailed and resource loaded critical path method ("CPM") schedule and detailed narrative work plan indicating the Contractor's planned sequencing and schedule for the Work, consistent with the required Substantial Completion Date and all other schedule requirements specified in the Contract Documents, and (ii) meet with the Airport Authority to discuss the schedule for the Project and agree upon assumptions and methodology used in preparing the schedule for the construction of the Project. In developing the Project Schedule, the Contractor shall discuss with the Airport Authority specific procedures and techniques to be employed in preparing and updating the CPM schedule, including standards and formats in hardcopy and

electronic form for dictionaries (activity code classifications, activity ID coding structure, calendar standards, etc.), schedule graphics and reports. The parties shall also agree on the requirements for bar chart summary schedules to be prepared and updated bi-weekly by the Contractor, and monthly work plan (look-ahead) schedules, which, unless otherwise directed by the Authority's Representative, shall be updated weekly and submitted and discussed at each weekly job meeting. The CPM schedule shall comply with the requirements specified in Subparagraph 7.2.2 below. The Work Plan shall comply with the requirements specified in Subparagraph 7.2.3. The Contractor shall revise the draft CPM schedule as necessary based upon the Airport Authority's comments as provided in Subparagraph 7.2.2 below, so as to obtain acceptance by the Airport Authority of a complete detailed CPM schedule. Such approved CPM schedule, as modified from time to time with the express acceptance of the Airport Authority as hereafter provided, is referred to in the Contract Documents as the "Baseline CPM Schedule." The Baseline CPM Schedule will be employed by the Contractor in its scheduling and performance of the Work.

7.2.2 The Baseline CPM Schedule shall (i) be produced using scheduling software approved by the Airport Authority, (ii) include all Work activities such as design review, permitting, Submittals, Designer approval, procurement, delivery, installation, and start-up/testing milestones, (iii) provide a graphic representation of all activities necessary to complete the Work, and (iv) identify all Work activities that are critical in insuring the timely achievement of all milestones identified therein including Substantial Completion of the Work within the Construction Duration (i.e., activities which, if delayed or extended, would cause the scheduled overall period to achieve Substantial Completion to be extended) ("Critical Path Activities"). Each activity shall include a concise description of work and shall have a responsibility code that identifies who performs the activity by trade. Each activity shall be connected to preceding activity and a proceeding activity, except that the Notice To Proceed (or notice of award if applicable) milestone does not have a preceding activity and the Final Completion milestone does not have a proceeding activity. The Baseline CPM Schedule shall be resource loaded to allow for review and acceptance of activity durations by the Airport Authority. Resources for each activity shall include the average labor crew size, number of crews, and the equipment needed to support installation. The extent of the required resource loading will be determined by the Airport Authority in consultation with the Contractor. The schedule submittal shall correspond to the detailed narrative work plan, as required in 7.2.1, explaining the Contractor's anticipated means and methods and productivity rates. The CPM schedule shall be reviewed by the Airport Authority (as a condition of acceptance of the initial Baseline CPM Schedule and from time to time thereafter) for purposes of determining compliance with the Substantial Completion Date and any other schedule requirements specified in Contract Documents, and so that the Airport Authority will be able to understand the general sequencing of the Work as proposed by the Contractor. The Airport Authority's review and approval or acceptance of the Baseline CPM Schedule shall not constitute approval or acceptance by the Airport Authority of the durations or relationships of individual activities reflected in the schedule, nor otherwise affect the Contractor's sole responsibility for the schedule. Approval of the initial Baseline schedule is a condition precedent of the Contractor's initial pay application submittal.

7.2.3 The Work Plan shall (i) be fully coordinated with the CPM schedule, and include descriptions of (ii) means and methods, (iii) number of crews proposed, (iv) equipment for each crew, (v) expected production rates per day for major activities.

7.2.4 The Baseline CPM Schedule shall identify and separately code all activities that may be affected by the work of separate contracts. If requested by the Airport Authority, as part of the Contractor's Monthly Report the Contractor shall furnish a separate subschedule of the Progress Schedule Update showing all separately coded activities as described in the preceding sentence, for use in coordination with separate contracts.

7.2.5 The revised Baseline CPM Schedule shall meet the requirements of Subparagraph 7.2.2 above. After the acceptance of each revised Baseline CPM Schedule, the Contractor shall status all activities to date to reflect the activity status that has been previously approved by the Designer and the Airport Authority for the monthly Applications for Payment. The status schedule shall be referred to in the Contract Documents as the "Progress Schedule Update."

7.2.6 The Contractor shall be responsible for preparing monthly Progress Schedule Updates, so as to provide a complete and accurate report of actual construction progress as compared with the Baseline CPM Schedule and to determine how each party involved in the performance of the Work should proceed in order to meet the Substantial Completion Date(s) and any interim milestones. As part of its obligation to monitor and maintain schedule compliance, the Contractor shall (a) review and assess the performance and progress of each Subcontractor, at least monthly, (b) establish a systematic procedure for gathering and analyzing construction data from each Subcontractor, (c) require each Subcontractor to furnish all necessary schedule status information at each construction progress meeting, and (d) prepare, on a monthly basis, a narrative report on the status of the Project and schedule compliance, highlighting progress to date and those areas or activities where delays or other problems exist or are anticipated, or which otherwise require management attention. The Contractor's Monthly Report shall include updates of the bar chart summary schedule, a narrative work plan schedule for the pending period, and the narrative report referred to in the preceding sentence. In addition, as part of the monthly Application for Payment, the Contractor shall furnish the Progress Schedule Update, updating the information contained in the latest accepted Baseline CPM Schedule to indicate the current status of all activities (start and completion dates and percent complete). The form of such Progress Schedule Update will be determined by the Authority's Representative in consultation with the Contractor. Updating of the Baseline CPM Schedule to reflect actual progress shall not be considered revisions to the Baseline CPM Schedule. All other changes, including but not limited to the following, shall be considered revisions to the Baseline CPM Schedule: (i) adding and/or deleting activity relationships, (ii) adding and/or deleting activities, (iii) changes to activity durations, (iv) changes to milestone dates or to the Substantial Completion Date(s) or Final Completion Date(s), (v) changes in the sequence of work activities, (vi) changes to the cost-loading of activities. Revisions to the Baseline CPM Schedule shall be identified and submitted, including a written narrative explanation, to the Airport Authority for review and acceptance. If as a result of the Progress Schedule Update, revisions to the Baseline CPM Schedule are necessary so that the Baseline CPM Schedule will reflect the actual progress and sequence of the Work, the Airport Authority may request, and the Contractor shall submit, revisions to the Baseline CPM Schedule as provided herein. As used in the Contract Documents, the term "Project Schedule" shall mean the latest accepted Baseline CPM Schedule.

7.2.7 Float in the schedule shall be for the benefit of both parties to the Contract and not for the exclusive benefit of the Contractor. Suppression or consumption of float by extended activity durations, dummy activities, preferential sequencing or other techniques shall not be allowed.

7.2.8 Without limitation of the provisions contained in Article 8, failure of the Contractor to comply with the requirements of the Contract Documents concerning the construction schedule shall be grounds for withholding of progress payments to the Contractor. The Airport Authority's and Designer's review of the Contractor's schedules shall not impose any duty on the Designer or the Airport Authority with respect to the timing, planning, scheduling, or execution of the Work. Without limitation, if the Contractor proposes a Baseline CPM Schedule indicating a date of Substantial Completion for the Work (or any part thereof) which is earlier than the Construction Duration, the Contractor shall not be entitled to additional payment or compensation of any kind if, for any reason, the full Construction Duration is required to achieve Substantial Completion of the Work or part thereof. Acceptance or approval of the Contractor's schedule by the Designer or the Airport Authority shall not constitute approval of construction means, methods, techniques, sequences or procedures, for which the Contractor shall have sole responsibility.

7.3 PROGRESS AND COMPLETION

7.3.1 Upon receipt of a Notice to Proceed With Construction (which may be a full or partial notice to proceed), the Contractor agrees to proceed with the Work promptly and diligently under the direction of the Airport Authority or its duly authorized representative. The Contractor agrees to adhere to the Project Schedule, to achieve all interim completion milestones, and to complete the Work on or before the Substantial Completion Date(s) set forth in the Project Baseline Schedule. It is agreed that time is of the essence of this Contract. The issuance of a Notice to Proceed by the Airport Authority does not relieve the Contractor of any of its

responsibilities for complying with the requirements of the Contract Documents related to safety and Project approvals, or any other requirements of the Contract Documents.

7.3.2 The Contractor shall at all times provide adequate rates of progress for the various parts of the Work so as to properly advance the Work and so that the Project, in the opinion of the Airport Authority, at all times meets the requirements of the Project Schedule. Whenever Critical Path Activities fall behind the planned schedule of construction as shown on the Project Schedule, the Contractor shall notify the Airport Authority and advise the Airport Authority of action being taken to return the Work to the planned schedule or to revise the schedule as necessary to maintain the Substantial Completion Date(s), and such action shall be indicated on the Project Schedule which shall then be re-submitted by the Contractor to the Airport Authority for approval.

7.3.3 Without limitation of the provisions of Subparagraph 7.3.2, it is agreed that in view of the critical nature of the time of completion of the Work, if the Airport Authority determines that the rate of progress of the Work has been delayed, or that the Project Schedule has otherwise been delayed or is in jeopardy of not being met, the Airport Authority shall have the right to require the Contractor to take whatever steps are necessary to recover such delay. If such delay is an Excusable Delay, then the cost of such recovery shall be borne by the Airport Authority; in all other cases, the cost associated with such recovery shall be borne by the Contractor, and the activities required to effect such recovery shall not be deemed to be a Change in the Work and there shall be no increase in the Contract Sum on account of such recovery activities. The Contractor shall, within three days after the Airport Authority's request to take such action, notify the Airport Authority and the Designer in writing and commence implementation of the steps which the Contractor proposes to take to effect such recovery and provide the Airport Authority, in a form acceptable to the Airport Authority, a detailed recovery schedule setting forth the actions to be taken by the Contractor. If the Contractor disputes any direction by the Airport Authority given pursuant to this paragraph, it shall have no right to refuse to accelerate the Work, and the Contractor's only recourse shall be to make a claim for additional costs in accordance with the provisions of the Contract Documents.

7.3.4 If the Contractor shall neglect, fail or refuse to achieve Substantial Completion of the Work (or designated portion thereof) within the Construction Duration, as adjusted in accordance with the provisions of the Contract Documents, the Contractor and Contractor's surety shall be liable to the Airport Authority for the Authority's damages arising from such delay, including liquidated damages as provided in the Construction Manager at Risk Services Agreement. The rights and remedies of the Airport Authority provided herein and in the Construction Manager at Risk Services Agreement are in addition to any other rights or remedies provided under the Contract Documents or by operation of law. None of the following shall constitute a waiver of the Contractor's or its surety's obligations to pay damages to the Airport Authority:

- .1 acceptance of the Work or any portion thereof or payment to the Contractor or its surety therefore;
- .2 completion of the Work or any portion thereof or use of occupancy thereof by the Airport Authority or separate contractors; or
- .3 the Airport Authority's requiring or permitting the Contractor or its surety to complete the Work or any part thereof.

7.4 DELAYS AND EXTENSIONS OF TIME

7.4.1 If the Contractor is hindered or delayed in the commencement or progress of the Work by any act or omission of the Airport Authority or the Designer, or its or their employees or consultants, or a separate contractor engaged by the Airport Authority, or by changes in the Work duly ordered by the Airport Authority, or by fire or other unavoidable casualty, or by hurricane or other extraordinary weather conditions not anticipatable and preventing any continuation of operations by the Contractor, or such other unforeseeable occurrences, events or conditions as are beyond the control of the Contractor (it being agreed that delays occasioned by financial difficulties of the Contractor or any Subcontractor, or by the fault, negligence or failure of performance of any Subcontractor or Supplier, shall not be considered beyond the control of the Contractor), except to the extent that such occurrence, event or condition is caused by any fault or negligence of the Contractor, and provided that such

occurrence, event or condition (or the adverse consequences of such occurrence, event or condition) could not have been prevented or mitigated by the Contractor by exercising appropriate care, then the Construction Duration shall be extended by Change Order for such reasonable period of time, if any, as the Airport Authority may determine is required due to the nature of the delay, subject to the provisions of this Paragraph 7.4, and such time extension shall be the Contractor's sole remedy on account of such delay and the Contractor shall have no claim for additional costs or damages on account of such hindrance or delay (including, without limitation, loss of productivity or efficiency, impact damages, lost opportunity costs and other consequential damages, extended site-based costs, home office overhead, or profit). The procedures and other provisions contained in this Paragraph 7.4 are in addition to the provisions of the Contract Documents relating to procedures for Change Orders. A delay in the progress of the Work resulting from one or more of the occurrences, events or conditions described above for which the Contractor establishes its entitlement to an extension of the Construction Duration in accordance with the provisions of this Paragraph 7.4 is sometimes referred to in the Contract Documents as an "Excusable Delay."

The Contractor shall consider in its planning and scheduling of the Work the wide range of seasonal weather conditions historically experienced in the Detroit area; delays or temporary inability to perform work as a result of high or low temperatures and/or precipitation, where such conditions are consistent with the typical range of climatic conditions in the area, will not be considered an Excusable Delay. The Airport Authority may in its discretion recognize Excusable Delay where (i) weather conditions arise of an extraordinary nature, outside the range of reasonably anticipatable weather conditions in the Detroit area, (ii) the Governor of the State of Michigan has declared a state of emergency as a result of such weather conditions, so long as that state of emergency applies to the area of the Site, and (iii) such conditions prevent any performance of the Work for an extended period. Without limitation of the other provisions of this Paragraph 7.4, no extension of the Construction Duration will be granted for a delay caused by a shortage of materials, equipment or other elements of the Work or by labor disputes or disruption.

The Airport Authority's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Airport Authority's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

7.4.2 Whenever the Contractor claims an extension of the Construction Duration, only the necessary delay caused to completion of the Work as a whole shall be considered in measuring or evaluating the extent of the delay. No extension of the Construction Duration shall be granted for delays affecting portions of the Work which are not Critical Path Activities on the latest accepted Baseline CPM Schedule. In any event, even though a cause of delay meets the above conditions, any extension shall be granted only to the extent that the effect of such cause could not be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, rescheduling or resequencing work activities, and reallocating and redeploying forces), whether before or after the occurrence of the cause of delay. No extension shall be granted for any delay which, in whole or in part, results from or arises out of the acts or omissions of the Contractor or a delay which would not have affected the performance of the Contract were it not for the fault of the Contractor, or for other delay for which the Contractor is not entitled to an extension of the Construction Duration. No extension of the Construction Duration shall be granted on account of any occurrence, event or condition which would or might have caused an Excusable Delay were it not for a prior or superseding delay resulting from the act or omission of the Contractor. No extension of the Construction Duration shall be allowed unless the total float in the latest accepted Baseline CPM Schedule has been exhausted. Any reference in this Paragraph 7.4 to the fault, act or omission of the Contractor shall be deemed to include Subcontractors and Suppliers, employees and others performing any part of the Contract, and all the foregoing shall, for this purpose, be considered as if they were agents of the Contractor.

7.4.3 The Contractor shall notify the Airport Authority as soon as possible of any cause that may delay the Work, but in any event the Contractor shall give written notice to the Airport Authority no later than five (5) calendar days after the beginning of the event that the Contractor knows or should know of any cause which will

result (or has resulted) in delay for which the Contractor claims or intends to claim an extension of the Construction Duration (including those causes which the Airport Authority or the Designer is responsible for or has knowledge of). Such written notice shall (i) state that an extension is claimed; (ii) state in reasonable detail the circumstances which form the basis of the delay; and (iii) describe as fully as practicable at the time the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work. The Contractor shall provide such supporting documentation of its claim as the Airport Authority may require, including a time impact analysis as provided in Subparagraph 7.4.4 below.

7.4.4 The Contractor shall submit to the Airport Authority a written time impact analysis illustrating the impact on the project Baseline Schedule of each change in the Work or claimed delay. A time impact analysis shall be submitted with each Contractor Change Request or Change Proposal submitted by the Contractor in accordance with the provisions of Article 11 in which a time extension is requested. Each time impact analysis shall include a fragmentary network demonstrating the time impact to all affected activities in the Baseline CPM Schedule, utilizing the latest accepted Progress Schedule Update.

7.4.5 The submission of a written notice of delay and claim for time extension in accordance with the procedures and within the time period provided in Subparagraph 7.4.3, shall be a condition precedent to any extension of the Construction Duration. No officer, employee or representative of the Airport Authority or the Designer shall have authority to modify or waive, expressly or by implication, such condition precedent, and any action or statement by any such officer, employee or representative to such effect shall not be binding upon the Airport Authority. Since the possible necessity for an extension of the Construction Duration might materially alter the scheduling, plans and other actions of the Airport Authority, and since, with sufficient opportunity, the Airport Authority might (if it knew of the Contractor's claim) attempt to mitigate the effect of a delay for which an extension of the Construction Duration may be claimed, and since merely oral notice might cause disputes as to the existence or substance thereof and notice long after the event would seriously hinder or prevent the Airport Authority's investigation of the pertinent facts, the giving of written notice within the time period stated above shall be of the essence of the Contractor's obligations and failure of the Contractor to comply with these requirements shall be a conclusive waiver of a claim for extension of the Construction Duration. It shall in all cases be presumed that no extension or further extension of the Construction Duration is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Airport Authority that the conditions and requirements of this Paragraph 7.4 have been satisfied. To this end the Contractor shall maintain adequate records supporting any claim for an extension of the Construction Duration, and in the absence of such records the foregoing presumption shall be deemed conclusive.

ARTICLE 8

PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES

8.1.1 If a schedule of values is not included in or attached to the Construction Manager at Risk Services Agreement, the Contractor shall, prior to the first Application for Payment, and as a condition precedent to any payments to the Contractor hereunder, submit to the Airport Authority for approval a Schedule of Values allocating the Contract Sum to the various portions of the Work, prepared in such form and detail and supported by such data to substantiate its accuracy as the Airport Authority may require. This schedule shall be consistent with the cost-loading in the Baseline CPM Schedule, and shall be reviewed and revised from time to time if found by the Airport Authority to be inaccurate. All updates of the Schedule of Values shall be subject to the approval of the Airport Authority. So long as the Schedule of Values remains up to date and accurate, this approved schedule shall be used as a basis for the Contractor's Applications for Payment.

8.2 APPLICATIONS FOR PAYMENT

8.2.1 Before the Application Date, the Contractor shall submit to the Designer a draft copy of the Application for Payment for approval of quantities in accordance with Section 8.2.6. Following approval by the Designer, on

or before the Application Date, the Contractor shall submit to the Airport Authority, with a copy to the Designer, an Application for Payment requesting payment of the amount due the Contractor for the Work completed as of the end of the preceding month, as further provided in this Article 8. Such Applications for Payment shall be on a form provided or approved by the Airport Authority, shall be based upon the approved Schedule of Values and shall be accompanied by such certifications, accountings, invoices, payrolls, receipted bills and other supporting documentation and information substantiating the Contractor's right to payment as the Designer or the Airport Authority may request. Applications for Payment shall show the total value of the work performed and materials furnished and installed by the Contractor and each Subcontractor to date, the value of the work completed during the payment period and the percentage of completion to date for each line item of work.

8.2.2 Such Applications for Payment may include materials or equipment not incorporated in the Work but delivered and suitably stored at the site only if approved in advance in writing by the Airport Authority in its sole discretion. Payment may be requested for materials or equipment suitably stored at some other location agreed upon in writing in accordance with Paragraph 8.8. Without limiting the provisions of Subparagraph 8.2.1, payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale, paid invoices and such other documents, information or procedures as may be required by the Designer or the Airport Authority to establish the Airport Authority's title to such materials or equipment free and clear of all liens, claims, security interests or encumbrances (collectively referred to in the Contract Documents as "liens"), or otherwise to protect the Airport Authority's interests, including provision for appropriate property insurance and transportation to the site for those materials and equipment stored off the site.

8.2.3 The Contractor warrants that title to all Work, including all materials and equipment covered by an Application for Payment, will pass to the Airport Authority, free and clear of all liens, automatically without further action by the parties upon the first to occur of (i) incorporation in the construction or (ii) the receipt of payment by the Contractor. Transfer of title to the Airport Authority shall not relieve the Contractor of any of its duties or obligations under the Contract Documents or of any responsibility or liability for the safe delivery and safeguarding, custody, or warehousing of the materials or equipment, nor shall it constitute any waiver of the Airport Authority's right to absolute fulfillment by the Contractor of all of the terms of the Contract, nor shall it commence any warranty period (all warranty periods shall commence not earlier than Substantial Completion). The Contractor warrants that no Work, including materials or equipment covered by an Application for Payment, shall have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or any other secured party or otherwise imposed by the Contractor or any other person or entity.

8.2.4 Each Application for Payment shall be accompanied by a certification of payment and release of claims, in form provided or approved by the Airport Authority, from the Contractor and from each Subcontractor stating that it has been paid all amounts due it on the basis of the previous Applications for Payment, or else stating the amount not so paid and the reason for the discrepancy, and stating that it has no claims other than those specified in the certification. Contractor shall attach an original signed notarized sworn statements for payments, pursuant to such form as provided by the Airport Authority, made to subcontractors and material suppliers, original conditional waivers (as necessary) and original unconditional waivers for payments made to the Contractor by the Airport Authority. In the event of any such discrepancy or pending claims noted in a monthly certification by a Subcontractor, the Contractor shall furnish its own written explanation to the Airport Authority through the Designer.

8.2.5 The Contractor acknowledges that the Monthly Progress Report provided for in the Construction Manager at Risk Services Agreement is of significant importance to the Airport Authority in determining whether the Contractor is entitled to payment pursuant to each Application for Payment, and failure to deliver such Monthly Report in its entirety shall be deemed to be just cause for withholding payment to the Contractor. Any waiver by the Airport Authority of the requirement of submission of such Monthly Report (or any portion thereof) in respect of any Application for Payment shall not be deemed to be a waiver of the Airport Authority's right to require the full Monthly Report in respect of any future Application for Payment.

8.2.6 On a schedule established by the Airport Authority, generally [7] days prior to formal submission of each Application for Payment, the Contractor shall submit the Application for Payment in draft form, including all supporting materials, to the Designer. The Contractor shall meet with such parties as necessary to review the draft Application for Payment, and the Contractor shall supply additional information as requested by the Designer or the Airport Authority so as to substantiate all amounts to be included in the Application for Payment. Upon agreement of the parties, the Contractor shall formally submit the Application for Payment. Two complete copies of the application package, including certifications of payment and release of claims, DBE progress reports and other attachments as required by the Contract Documents or by Airport Authority policy, shall be forwarded to the Airport Authority's finance division at the address set forth in the Construction Services Agreement. Certified payroll reports shall be submitted monthly to:

DBE Coordinator
L.C. Smith Terminal
Detroit Metropolitan Wayne County Airport
Detroit, Michigan 48242

The Airport Authority shall not be responsible for delays in processing Applications for Payment resulting from the Contractor's failure to deliver the application to the proper address or to submit a complete application.

8.3 RETAINAGE

8.3.1 Each Application for Payment and each progress payment made to the Contractor shall be subject to retainage at the rate of ten percent (10%), until the Contractor has achieved fifty percent (50%) Work completion, as approved by the Airport Authority. Thereafter, the Airport Authority will not withhold retainage from subsequent progress payments. Retainage shall apply to all amounts included in Applications for Payment.

8.3.2 The Airport Authority's right to withhold retainage in accordance with this Paragraph is in addition to the Airport Authority's right to withhold payment under Paragraph 8.5 to protect the Airport Authority from specific identified problems and claims and other costs for which the Contractor is responsible. The Airport Authority is not required to use retainage amounts to protect the Airport Authority from costs and liability arising from liens, claims, and other liabilities caused by the Contractor.

8.3.3 The Airport Authority shall have the right, but not the obligation, to release a portion or all of the retainage related to a Subcontractor who achieves final completion of its subcontracted portion of the Work under its Subcontract substantially earlier than Final Completion of the entire Work, but only upon the written recommendation of the Contractor that such retainage should be released.

8.3.4 At the time of Substantial Completion of the Work, the Contractor may make written application for a partial release of retainage held by the Airport Authority. The Airport Authority shall have no obligation to approve such application. Should the Airport Authority agree to such request, considering the Contractor's performance, the performance of the Subcontractors, the status of resolution of changed Work and claims and other factors, the Airport Authority may release a portion of the retainage. The Airport Authority's agreement to any such partial release of retainage shall not change the percentage retained from future Applications for Payment for progress payments after the date of the partial release of retainage.

8.3.5 All remaining retainage amounts shall be held by the Airport Authority and shall be released in accordance with Paragraph 8.6.

8.4 APPROVAL FOR PAYMENT AND PAYMENT TO CONTRACTOR

8.4.1 The Airport Authority will, within seven (7) days after receipt of the Contractor's formal submission of the Application for Payment, either process the Application for Payment for such amount as the Airport Authority

determines is properly due, or notify the Contractor in writing the reasons for withholding payment as provided in Subparagraph 8.5.1. Approval of an Application for Payment by the Airport Authority shall not constitute a waiver of any obligations of the Contractor under the Contract Documents.

8.4.2 Within thirty (30) days of Airport Authority's approval for payment for all or any portion of an Application for Payment, the Airport Authority shall pay to the Contractor all approved amounts of the Application for Payment, less retainage as provided in Paragraph 8.3. Any portion of an Application for Payment disapproved by the Airport Authority shall be paid to the Contractor within five (5) working days after the correction by the Contractor of all deficiencies or other reasons resulting in such disapproval and the approval of such corrections by the Airport Authority. If the Airport Authority determines to have the deficiencies corrected by another contractor in accordance with the Contract Documents, the cost thereof shall be deducted from the Contract Sum as provided in Paragraph 2.3.

8.4.3 No approval for payment, nor any progress payment made, nor any partial or full use or occupancy of the Work or the Project by the Airport Authority, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

8.4.4 Contractor shall promptly pay all amounts due to each of its Subcontractors and material suppliers, upon receipt of payment from the Airport Authority, and out of the amount paid to the Contractor on account of the portion of the Work performed by such Subcontractor or material supplier, less retainage as provided herein, and shall require each such Subcontractor and material supplier to make payments to its Subcontractors and material suppliers in a similar manner. The Airport Authority shall have no obligation to pay or to see to the payment of money to a Subcontractor or supplier except as otherwise required by law.

8.5 PAYMENTS WITHHELD

8.5.1 The Airport Authority may withhold approval of a payment in whole or in part, to the extent necessary to protect the Airport Authority, if the Airport Authority is unable to confirm that the Work has progressed to the point indicated in the Contractor's Application for Payment or that the quality of the Work is in accordance with the Contract Documents. In such event the Airport Authority shall notify the Contractor as provided in Subparagraph 8.4.1. If the Contractor and the Airport Authority cannot agree on a revised amount, the Airport Authority will approve for payment for the amount which it determines is properly due. The Airport Authority may also decline to approve payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any approval for payment previously issued, and (in addition to and without limitation of any other rights and remedies of the Airport Authority under the Contract Documents) may withhold payment of any amounts claimed to be due by the Contractor, in each case to such extent as may be necessary in order to provide for retention covering the Airport Authority's estimate of the fair value of any claims it may have against the Contractor, which amounts may include, but shall not be limited to, the estimated fair value of costs or losses arising from:

- .1 defective or non-conforming Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security against such claims in form acceptable to the Airport Authority has been provided by the Contractor,
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Airport Authority or another contractor for which the Contractor is responsible,
- .6 reasonable evidence that the Work will not be completed within the Construction Duration,
- .7 failure to meet the contractual DBE goal/commitment, or
- .8 persistent failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract

Documents, including, without limitation, failure of Subcontractors or the Contractor to comply with requirements for maintaining as-built Drawings.

If and when the grounds set forth above are removed without cost to the Airport Authority, payment may be requested and shall be made for amounts withheld because of such grounds, as provided in Paragraph 8.4.1.

8.6 SUBSTANTIAL COMPLETION

8.6.1 When the Contractor believes that the Work, or a portion thereof designated in the Contract Documents for separate completion or approved for separate completion by the Airport Authority in writing, is sufficiently complete, the Contractor shall carefully review the Work and prepare a punchlist of items for completion by the Subcontractors. A copy of the Contractor's punchlist shall be provided to the Designer and the Airport Authority. The Contractor shall monitor the completion of such punchlist items by the Subcontractors, and when the Contractor is confident that all punchlist items necessary to establish substantial completion have been completed, it shall submit a written request to the Airport Authority to conduct an inspection for substantial completion of the Work or such portion thereof. The Contractor shall submit such request only if and when the Contractor considers that the Work, or such portion thereof, is substantially complete as defined in Subparagraph 7.1.2, all tests and start-ups have been performed with a satisfactory outcome, and such request shall be accompanied by three (or such greater number as may be requested by the Airport Authority) complete sets of all warranties and guarantees required by the Contract Documents, in a form satisfactory to the Designer and the Airport Authority.

8.6.2 If the Airport Authority receives a proper request for inspection for substantial completion as provided above, the Designer, the Authority's Representative and other representatives of the Airport Authority shall inspect the Work or such portion thereof and shall prepare a punchlist of items to be completed or corrected, or review, confirm and modify as appropriate the punchlist prepared by the Contractor. Failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall, promptly and as a condition to achieving substantial completion, correct or complete any items identified in the Airport Authority's inspection which are necessary to be completed or corrected for the Airport Authority to efficiently use or occupy the Work or such portion thereof for the use for which it is intended or if the completion or correction thereof after the Airport Authority commenced use and occupancy would entail a risk of damage to completed work.

8.6.3 When the Designer, in consultation with the Authority's Representative, on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, and when the Contractor has complied with the provisions of Paragraph 4.2 and all other conditions precedent to Substantial Completion provided for in the Contract Documents have been satisfied, the Airport Authority will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the respective responsibilities of the Airport Authority and the Contractor for security, maintenance, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which shall in no event be greater than 90 days after the date of Substantial Completion. The Authority's Representative shall join in the preparation and issuance of the Certificate of Substantial Completion. Warranties and guarantees required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

8.6.4 Upon receipt of Substantial Completion submitted by the Airport Authority, the Contractor may request partial release of retainage as provided in Paragraph 8.3.

8.6.5 If, through no fault of the Designer, the Designer (including its subconsultants) is required to conduct more than two (2) inspections of any portion of the Work to determine whether such portion of the Work is substantially complete, the Contractor shall be responsible for any fees assessed by the Designer for additional services on account of such additional inspections. The Contractor shall promptly reimburse the Airport

Authority for any such additional fees or, if the same are not promptly reimbursed, the Airport Authority may deduct such amounts due from amounts otherwise payable to the Contractor.

8.7 FINAL COMPLETION AND FINAL PAYMENT

8.7.1 Upon receipt of written notice from the Contractor that the Work or designated portion thereof is ready for final inspection and acceptance, the Designer and the Airport Authority will promptly make such inspection and, if they find the Work acceptable under the Contract Documents and the Contract fully performed, the Designer will promptly issue a certificate stating that, based on its observations and inspections, the Work has been completed and that to its best knowledge, information and belief the Work has been completed in accordance with the Contract Documents. The Designer's certificate will constitute a further representation that the conditions precedent to the Contractor's entitlement to final payment as set forth in this Paragraph 8.7 have been fulfilled. If the Designer or the Airport Authority find the Work unacceptable the Contractor shall promptly complete or correct the Work. Upon such completion and/or correction, the Airport Authority shall promptly issue a certificate of final completion of the Work.

8.7.2 Notwithstanding anything to the contrary in this Paragraph 8.7 contained, if the Airport Authority elects to take occupancy of the Work or the Project in stages, inspections for Substantial Completion and Final Completion may be performed, at the request of the Airport Authority, in stages (*i.e.*, in respect of the portion of the Work to be occupied by the Airport Authority and such building systems as are necessary for the Airport Authority's occupancy of such portion of the Project). The provisions of this Paragraph 8.7 shall apply to any staged final inspection, except that in no event shall Final Completion be deemed to have occurred until final inspection and acceptance by the Airport Authority has occurred in respect to the entire Work. If, through no fault of the Designer, the Designer (including its subconsultants) is required to conduct more than two (2) inspections of the Work to determine Final Completion, the Contractor shall be responsible for any fees assessed by the Designer for additional services on account of such additional inspections. The Contractor shall promptly reimburse the Airport Authority for any such additional fees or, if the same are not promptly reimbursed, the Airport Authority may deduct such amounts due from amounts otherwise payable to the Contractor.

8.7.3 "Final Completion" shall mean the completion of all of the Work in accordance with all of the terms and conditions of the Contract Documents and acceptance thereof after final inspection in accordance with Subparagraphs 8.7.1 through 8.7.2 and Subparagraph 8.7.4. Prior to Final Completion, the Contractor shall fully demonstrate the use and function of each system or item of equipment included in the Work. The date of issuance of the Airport Authority's written notice of acceptance shall be designated as the date of Final Completion. Upon Final Completion, the Airport Authority shall take over the completed Work and the site for use and occupancy if it has not already done so. A final Application for Payment may be made at any time after the date of Final Completion.

8.7.4 Prior to and as a condition precedent to Final Completion, all of the following matters shall have been resolved and documents and items shall have been received and approved in writing by the Airport Authority :

- .1 final documents of similar nature to those required by the Contract Documents in connection with any Application for Payment hereunder,
- .2 all final Project Approvals (including, without limitation, the approval of the Airport Authority's insurance underwriters, if required), certificates and affidavits (including, without limitation, certificates in respect of plumbing, sprinklers, electrical systems and life safety systems as required by governmental authorities) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including unconditioned permanent and full Certificates of Use or Occupancy for all portions of the Project and any other necessary use permits or inspection certificates, unless those permits, approvals, certificates, affidavits and authorizations are not received by the Airport Authority solely for reasons as to which the Contractor has no responsibility,

- .3 formally prepared record documents, “as-built” drawings, records and related data including all field notes and QA/QC test reports of all the Work (drawings shall be in reproducible form) all in accordance with the requirements of the Contract Documents,
- .4 all operating and maintenance manuals as required by the Contract Documents, parts lists, the final version of the Project Directory, and repair source lists,
- .5 all guarantees and warranties to which the Airport Authority is entitled under the Contract Documents, using a guarantee form acceptable to the Airport Authority,
- .6 satisfactory proof that all claims arising out of the Work have been released or bonded to the Airport Authority’s satisfaction,
- .7 acknowledgment, through original unconditional waivers, of prior payments and release of liens and claims from all Subcontractors and the Contractor,
- .8 the Designer’s certification that the Work is complete,
- .9 a satisfactory report by the Contractor which is approved by the Designer and the Authority’s Representative that all mechanical systems have been and are properly balanced,
- .10 confirmation that all practical orientation and operating instructions for all materials, systems, and equipment have been satisfactorily completed, and that all required training of Airport Authority’s personnel has been completed,
- .11 if liability insurance is provided by the Contractor, a certificate of insurance evidencing products liability and completed operations insurance coverage for the three year period following Final Completion,
- .12 an original notarized final sworn statement and applicable affidavit(s) that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Airport Authority or its property might in any way be responsible, have been paid or otherwise satisfied, and any other information or documentation requested by the Airport Authority establishing payment or satisfaction of all obligations arising out of the Contract, to the extent and in such form as may be designated by the Airport Authority,
- .13 consent of surety, if required, to release retainage and final payment,
- .14 delivery of all spare parts required to be submitted pursuant to the Contract Documents, and
- .16 all final payroll information or records required by Applicable Laws or the Contract Documents and any outstanding DBE certifications
- .17 as applicable, any long term leases, contracts, or maintenance agreements.

If the final documentation submitted by the Contractor is not deemed complete by the Airport Authority or if the Airport Authority deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

8.7.5 The Airport Authority shall not be required to make final payment of any remaining amounts due to the Contractor until Final Completion has occurred. The making of final payment shall not constitute a waiver of any claims by the Airport Authority. The Airport Authority shall have the right, in its sole discretion, but the Airport Authority shall have no obligation, to accept the Work subject to uncompleted items, which shall be set forth in a notice of final acceptance. In such event, an amount equal to of the cost of such uncompleted items (as determined in good faith by the Airport Authority) shall be retained by the Airport Authority. The amount so retained shall not become due and payable to the Contractor until said items have been completed, the Airport Authority’s inspection shall have confirmed such completion, and the Contractor shall have submitted an Application for Payment with respect to such items. Notwithstanding the foregoing, if such items are not completed within ninety (90) days after Substantial Completion, the Airport Authority may, in its sole discretion, cause the same to be completed by such persons or entities as the Airport Authority shall choose, and the cost of same shall be paid by the Contractor or deducted, to the extent possible, from the amounts so retained or any other sums then due the Contractor hereunder.

8.7.6 The acceptance of final payment shall constitute a release and waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor in writing as unsettled at the time of the final payment.

8.8 STORAGE OF MATERIALS OFF-SITE

8.8.1 The Contractor shall obtain prior written approval from the Airport Authority for permission to store materials or equipment to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any and all charges for storage, including insurance, shall be borne solely by the Contractor. Before approval, the Airport Authority may require, without limitation (i) evidence that the off-site location is properly secure, (ii) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site, and (iii) a certificate from the Contractor stating:

- .1 The name of the Subcontractor (or the Contractor) that leases or owns the warehouse or other storage facility;
- .2 The location of such storage facility, including the specific storage space, and a certification that the Contractor has visited such location, verified the storage of such material or equipment therein or thereon (including confirmation that the materials or equipment are marked with the Project Name, Project Number, and Control Number, and segregated as provided below), and verified payment of all storage charges through delivery of the materials or equipment to the Work site;
- .3 The date(s) on which the material or equipment is first stored at such facility; and
- .4 A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers.
- .5 The storage facilities climate control systems maintain the storage space environment in a manner that meets or exceeds the manufacturer's requirement for storage of materials or equipment, where applicable.

8.8.2 The Contractor shall furnish to the Airport Authority, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location.

8.8.3 The Contractor and Subcontractors shall mark each sealed carton or other item with the name of the Project and the Airport Authority, and all materials or equipment stored off-site shall be segregated to the extent required by the Airport Authority or the Designer.

8.8.4 Payment for materials or equipment stored off-site shall be at the discretion of the Airport Authority. Title to materials or equipment stored off-site shall be transferred at the time at which the Airport Authority pays for them, free of any lien or other interest of the Supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the Contractor and Subcontractors shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any Application for Payment which are stored at locations other than the site, and the Contractor assumes all risk of loss or damage to such materials or equipment, and the Contractor shall hold harmless the Airport Authority from and against all liabilities arising out of or resulting from loss or damage, from any cause, to such materials or equipment for which payment is requested, including liens, security interests or other claims of any kind by Suppliers or other third parties relating to such materials or equipment.

ARTICLE 9

SAFETY AND PROTECTION

9.1 SAFETY PRECAUTIONS AND PROGRAMS

9.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including, but not limited to, compliance by the Contractor and all Subcontractors with all safety precautions and programs required by the Occupational Safety and Health Act of 1970, as amended, other applicable laws and regulations, the Contract Documents, and any insurance carrier providing insurance coverage for the Airport Authority or the Contractor in connection with the Project. Without limiting the generality of the foregoing, the Contractor shall, prior to issuance of the first Notice to Proceed With

Construction, prepare a written safety program, in accordance with the applicable sections of the Contract Documents, which shall be submitted to the Airport Authority and the Designer and, upon acceptance by the Airport Authority, issued to all Subcontractors and all forces employed on the Work. Such program shall include engagement by the Contractor of a full-time safety officer, and conduct of regular safety meetings, and the Contractor shall prepare, circulate and maintain on file at the site minutes of all safety meetings.

9.2 SAFETY OF PERSONS AND PROPERTY

9.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all protection necessary to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons or other entities who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site; and
- .3 other property of the Airport Authority or others at the site or elsewhere on the Airport, including personal property and equipment and trees, shrubs, lawns, walks, pavements, roadways, structures, improvements and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.2 The Contractor shall give all notices and comply with all Applicable Laws and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

9.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating and enforcing safety regulations and notifying the Airport Authority and users of adjacent property, utilities and other improvements.

9.2.4 The Contractor shall satisfactorily conduct the Work at all highway and street crossings and along all highways, street and other ways in accordance with the permission and requirements of the proper authorities. Vehicular traffic shall be routed over temporary detours during construction when required to maintain proper flow of traffic. The Contractor shall plan and conduct its operations in such a manner that the continuous flow of traffic is uninterrupted and with a minimum of inconvenience to the general public. Traffic control shall be planned using the most recent edition of the Michigan Department of Transportation Uniform Manual of Traffic Control devices.

9.2.5 The Contractor shall assume all responsibility for the protection of property of adjacent owners so far as affected by the Contractor's operations, and shall build and maintain such temporary fences or walls as may be required to permit the reasonable use of such adjacent property and to exclude trespassers from the site. The Contractor shall provide temporary protection at all openings in the outside fences or walls to prevent unauthorized persons from obtaining access to the site during the night and at other non-working hours. The Contractor shall notify the Airport Authority and owners of adjacent property (including underground utility owners) when prosecution of the Work may affect such adjacent property owners, and shall cooperate with them in the protection, removal, relocation or replacement of their property. All damage, injury or loss to such property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization performing any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Airport Authority, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor). The Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other elements of all existing structures adjacent to the site which are in any way affected by the Work. These duties and responsibilities of the Contractor shall continue until Final Completion of the Work (except as otherwise expressly provided at Substantial Completion).

9.2.6 The Contractor shall prepare a Hazard Safety Analysis Report for construction activities that are inherently dangerous to workers or property. Such activities include, but are not limited to, excavation, crane lifts, hot cutting or welding, working on scaffolding or ladders, and erection of steel or precast concrete structures. Such report shall describe the activities, workers involved, equipment required, work areas and hazards associated with the Work. Such report shall also identify the precautions the Contractor and its Subcontractors will use to perform the Work in a safe manner, and shall list contact names and telephone numbers for Contractor's site superintendent and safety officer.

No use of explosives or conducting of blasting operations shall be permitted without the express prior written permission of the Designer and the Airport Authority and in strict accordance with the requirements of the Airport Authority and Applicable Laws governing the keeping, storage, use, manufacture, sale, handling, transportation or other disposition of explosives and such other rules and regulations as may be promulgated from time to time by authorities having jurisdiction. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.7 Unless otherwise instructed, the Contractor shall promptly repair, reconstruct or restore all damage or loss to any property referred to in Subparagraph 9.2.1 caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The proceeds of any property insurance maintained by the Airport Authority and covering such property shall be made available to pay the costs of remedying such damage or loss, subject to the provisions of Article 11 below. If and to the extent such damage or loss is caused by the acts or omissions of the Airport Authority or the Designer, the Airport Authority shall be responsible for the costs of remedying such damage or loss to the extent the proceeds of such insurance are insufficient to cover such costs. In all other cases, the Contractor shall bear the cost of remedying such damage or loss to the extent such cost exceeds the proceeds received under property insurance covering such loss or damage. The Contractor shall be fully and solely responsible for all Work and other operations carried out by the Contractor on adjacent properties or otherwise off of the site. The liability insurance required to be carried by the Contractor under Article 10 shall cover such Work or operations, and the Contractor shall indemnify and defend the Airport Authority, the Designer, and the owners of such adjacent properties from and against all claims, suits, losses or costs arising out of such Work or operations.

9.2.8 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Safety Officer unless otherwise designated by the Contractor in writing to the Airport Authority.

9.2.9 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety or that endangers the health and safety of people around the Work.

9.2.10 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment, and shall comply with all recommendations regarding fire protection made by the representatives of the insurance company or companies carrying insurance on the Work or by the local fire chief or fire marshal. The site shall be kept orderly and clean, and all combustible rubbish shall be removed from the site daily.

9.2.11 The Contractor shall at all times protect excavations, trenches, structures, materials, equipment and fixtures from damage from rain, snow and other weather, ground water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end. The Contractor shall remove snow and ice which might create a hazard on or about the site or result in damage or delay.

9.2.12 The Contractor shall take all necessary precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Airport Authority forming part of the Work, or located within the site. The Contractor shall have full responsibility for the security of such property of the Airport Authority and shall reimburse the Airport Authority for any such loss, damage or injury resulting from

vandalism, theft, burglary, pilferage, unexplained disappearance or any other cause to the extent that the same is not covered by the Airport Authority's insurance.

9.2.13 In the event the Contractor discovers any active utility line not previously disclosed in any survey, he shall cease all work in the immediate area which may affect such line and shall promptly notify the Airport Authority, the Designer, and the affected utility company. The Contractor shall not restart work without notice from and approval of the Airport Authority.

9.2.14 The Contractor shall protect all finished surfaces of the Work, including the jambs and soffits of all openings used as passageways or through which materials are handled, against any possible damage resulting from the conduct of Work by the Contractor or by any separate contractors.

9.2.15 In the event of temporary suspension of Work and during inclement weather, or whenever further directed by the Airport Authority or the Designer, Work and materials shall be adequately protected against damage. The Contractor shall take special precautions to prevent damage to materials and work installed in cold weather, by providing adequate temporary heat and suitable enclosures or covering. The ground surfaces under footings and under pipe lines, and all concrete and masonry work, shall be protected against frost and freezing. The minimum measures to be taken shall be in accordance with the requirements of Paragraph 3.12 and in accordance with the requirements for winter conditions as set forth in ACI-318-83 "Building Code Requirements for Reinforced Concrete" published by the American Concrete Institute or as directed by the Designer. The Contractor shall provide temporary weather-tight enclosures for all exterior openings to protect the Work from freezing weather and to maintain proper building temperatures for operations of all trades.

9.2.16 The Contractor shall provide ventilation of enclosed areas during construction as required to permit proper curing and drying out, and to prevent excessive humidity, moisture and condensation. Ventilation shall be by natural or artificial means as required by the conditions involved.

9.2.17 The Contractor shall control the safe handling and storage of all welding materials, acetylene and oxygen tanks, and other equipment required for welding and cutting work at the site. All welding materials and equipment shall be removed promptly from the premises upon completion of the welding and cutting work. No welding torch or other open flames will be used within any building without a fire watch with an appropriate fire extinguisher or within one hour of quitting time.

9.2.18 The Work shall be performed in such a manner as to prevent fire, and during any work involving a fire hazard the Contractor shall take all necessary precautions against fires starting and spreading on the site, within buildings and temporary structures. The Contractor shall provide and maintain sand buckets, suitable fire extinguishers and hoses where and as required to provide adequate means of extinguishing fires. Minimum fire prevention requirements shall be as directed and approved by the Airport Authority's insurance underwriters and the Airport Authority's Fire Department. Permanent standpipes shall be made available during construction. Gasoline and other flammable liquids shall not be stored within buildings, and shall be stored in and dispensed from U.L. listed safety containers in conformance with N.B.F.U. recommendations and the requirements of all authorities having jurisdiction. The Contractor shall make arrangements for periodic inspection by Airport Authority's Fire Department authorities and insurance underwriters' inspectors, cooperate with them and promptly carry out their recommendations.

9.2.19 The Contractor shall arrange for and provide all police details required by the Airport Authority's Public Safety Division to be present at or adjacent to the site for traffic control purposes. The cost of all police details so required shall be borne by the Contractor and included in the Contract Sum.

9.3 HAZARDOUS MATERIALS

9.3.1 Neither the Contractor nor any Subcontractor shall bring onto the site any Hazardous Material (hereafter defined), nor shall the Contractor or any Subcontractor negligently or intentionally release or allow to be released to, at, or from the site or any property adjacent thereto, whether of the Airport Authority or of an abutter, any

Hazardous Material, and, upon completion of the Work, the Contractor will deliver to the Airport Authority a certification and indemnification to the foregoing effect, which certification shall be to the best of the Contractor's knowledge. In the event of any violation of this Paragraph 9.3 by the Contractor or any Subcontractor, the Contractor shall indemnify, defend with counsel reasonably approved by the Airport Authority, and hold harmless the Indemnitees from any loss, cost, damage, expense (including, but not limited to, attorneys' fees, court costs, costs and expenses of consultants, and costs of abatement or removal of Hazardous Material and the costs of any tests), claim, action, fine or penalty incurred or suffered by, or imposed or levied upon any of them, in connection with any release of Hazardous Material. Release of Hazardous Material which was already present on the site prior to the commencement of the Work shall be governed by Subparagraph 9.3.2, unless the Contractor or its Subcontractors negligently or willfully allow the release to occur.

9.3.2 Provided the Contractor complies with the provisions of this Paragraph 9.3, and other applicable provisions of the Contract Documents, the Airport Authority shall be responsible for all costs and expenses of abatement or removal, including costs of any necessary tests, of Hazardous Material present on the site prior to commencement of the Work.

9.3.3 Unless otherwise provided in the Contract Documents, the Contractor shall: (1) promptly notify the Airport Authority of any suspected Hazardous Material which is encountered; (2) cease the Work in the area where suspected Hazardous Material is identified until otherwise instructed by the Airport Authority; (3) take reasonable precautions to prevent or contain the movement, spread, migration, or disturbance of such Hazardous Material and to protect persons and properties; (4) comply with the Federal Hazardous Communications Standards which are applicable to the construction industry, as well as all other applicable environmental, health, and safety laws and regulations; and (5) properly perform services in connection with decontamination of construction equipment.

9.3.4 For purposes of this Paragraph 9.3, "Hazardous Material" shall mean (i) any of those substances which are, as of the date of the Construction Services Agreement, included within the definitions of "hazardous substance," "extremely hazardous substance," "hazardous material," "hazardous chemical," "pollutant," "contaminant," "toxic chemical," "hazardous waste" or terms of similar import under the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. as amended, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. as amended, the Hazardous Materials Transportation Act, 49 U.S.C. § [1802 or § 6901] et seq. as amended, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. as amended, the Clean Air Act, 42 U.S.C. §7401 et seq. as amended, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. as amended, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. as amended, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. as amended, and any other federal, state or local law or regulation implementing or otherwise dealing with the subject matter of the preceding federal statutes which is in effect on the date of the Construction Services Agreement; or (ii) any of the following materials, wastes or substances: petroleum or a petroleum by-product; asbestos or asbestos-containing material; polychlorinated biphenyls; chlorofluorocarbons; flammables; explosives, radioactive materials, including radon gas; or urea formaldehyde foam insulation.

9.3.5 If the Contractor incurs additional cost or requires additional time for completion of the Work as a result of the presence of Hazardous Material on the site, the Contractor shall request an adjustment in the Contract Sum or the Construction Duration, or both, as provided in the Contract Documents.

9.4 SECURITY

9.4.1 The Contractor shall, prior to issuance of the first Notice to Proceed With Construction, prepare a written site security program, in accordance with the applicable Contract Document Sections, which shall be submitted to the Airport Authority and, upon acceptance by the Airport Authority, implemented the plan for the duration of the Project. The site security program may be modified as necessary throughout the duration of the Work. Without limitation, the Contractor shall provide security watch service at all such times as are necessary to protect the interests of the Contractor and the Airport Authority and to provide for the safety and security of the general

public and other users of the Airport, including employees and contractors of the Airport Authority and the Designer, and other persons who may be affected by the Work, and to exclude unauthorized persons from the site.

9.5 EMERGENCIES

9.5.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss and shall as promptly as conditions permit notify insurance carriers, the Airport Authority and the Designer of the nature of the emergency and circumstances related thereto. Immediately thereafter, Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 11 for Changes in the Work.

ARTICLE 10

BONDS AND INSURANCE

10.1 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND

10.1.1 The Contractor shall furnish a performance bond and a labor and materials payment bond, each in an amount not less than the Contract Sum. The labor and materials payment bond shall secure payment by the Contractor and all Subcontractors for labor performed or furnished and materials used or employed in the Work. Both the performance bond and the payment bond shall be in a form provided or approved by the Airport Authority, shall name the Airport Authority or others as requested by the Airport Authority as obligee(s), and shall be issued by a surety company or companies licensed and authorized to do business under the laws of the State of Michigan and acceptable to the Airport Authority. If payment and performance bonds are required pursuant to the RFQ, the premiums for such bonds are included in the Contract Sum and shall be paid by the Contractor. The performance bond shall cover all warranty obligations provided in the Contract Documents, and shall remain in effect for the entire correction period specified in Paragraph 12.2. All bonds shall be executed in the required number of counterparts and the Contractor's bonds shall be submitted to the Airport Authority for insertion into the Contract Documents prior to the execution of the Construction Manager Services Agreement.

10.1.2 The Contractor shall have the penalty sum of the bonds increased by endorsement, amendment or reissuance, in form acceptable to the Airport Authority, within five calendar days of receipt of an approved Change Order, in the event of any increase in the Contract Sum. The Airport Authority's receipt of the bond incorporating Change Order Work is a precondition to paying the Contractor for the Change Order Work.

10.2 CONTRACTOR'S INSURANCE COVERAGE

The Contractor shall purchase and continuously maintain in full force and effect during the entire term of the Contract (except as otherwise specifically provided below), the insurance coverage specified in this Paragraph 10.2 below, and in any Supplemental Conditions of the Contract Documents. All insurance maintained by the Contractor shall be written by companies acceptable to the Airport Authority.

10.2.1 Worker's Compensation. Insurance sufficient to discharge the Contractor's and all Subcontractors' obligations under all applicable workers compensation laws of the State of Michigan and other territories and states of the United States, the United States Longshoremen's and Harbor Worker's Compensation Act, the Jones Act and Admiralty or Maritime Law; employers liability coverage with limits not less than \$500,000.00 for bodily injury by accident or disease, including death, arising out of and in the course of employment, other than and distinct from any claim under worker's compensation laws; and employee disability insurance.

10.2.2 Commercial General Liability Insurance. Commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) combined single limit covering claims for bodily injury and property damage arising out of the Work, in a form providing coverage not less than that of a standard commercial general liability insurance policy, “occurrence form.” Such insurance shall provide coverage for all premises and operations and shall include independent contractors, products liability (for any product manufactured, assembled or otherwise worked on away from the Project site), completed operations for at least three (3) years after final completion and acceptance and final payment for the Work, contractual liability coverage, coverage for explosion, collapse and underground hazards, and broad form property damage coverage.

Coverage shall also provide and encompass at least the following:

- .1 Endorsement naming Airport Authority, the County of Wayne and the other Additional Insureds (hereafter defined) as additional insureds.
- .2 Waiver of Subrogation in favor of all Additional Insureds.
- .3 Policy(ies) to be primary as respects the coverage afforded the Additional Insureds, and not excess of or contributing with any other insurance available to the Additional Insureds.

10.2.3 Contractor’s Pollution Liability. The Contractor shall purchase a policy covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the operations and completed operations of the Contractor and its Subcontractors. Completed operations coverage will remain in effect for not less than three (3) years after final completion. The Airport Authority and the other Additional Insureds (as defined above) shall be named as additional insureds, and any retroactive date must precede the date of commencement of the Contractor’s Work. The limits of coverage shall be not less than \$1,000,000.00 per occurrence/claim.

10.2.4 Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance covering the ownership, maintenance or use of all owned, non-owned and hired vehicles used in the performance of the Work, including loading and unloading, with limits of not less than Five Million Dollars (\$5,000,000.00) combined single limit for bodily injury and property damage liability.

10.2.5 Property Insurance. “All-risk” builders’ risk insurance insuring against all risks of physical loss or damage to the Work, including all labor, materials, supplies, machinery, equipment, fixtures, temporary structures, and all other work of whatsoever nature, used or to be used in or incidental to the construction, fabrication, erection or completion and testing of the Work, until Final Completion. Limits of liability under such policy shall be 100% of the replacement value of the Work, with no co-insurance penalties. Such insurance shall include coverage for loss or damage while in transit (anywhere in the world) and while in storage away from the site, coverage against the perils of earthquake and flood, boiler and machinery losses, debris removal, including demolition occasioned by enforcement of Applicable Laws, and extra expense losses subject in each case to sub-limits of coverage approved by the Airport Authority. Deductible or self-insured retentions shall not be greater than \$10,000.00 per occurrence. The Contractor shall pay the deductible portion of any loss or damage to the Work covered by the builders’ risk policy.

The Airport Authority will be named as “loss payee” and the principal named insured under the all-risk builder’s risk insurance policy, and the Contractor and Subcontractors shall be named as co-insureds, as their respective interests may appear.

10.2.6 General Requirements. Each of the insurance policies required to be provided by the Contractor under this Paragraph 10.2 shall:

- .1 be subject to the review and approval of the Airport Authority as to compliance with the terms of the Contract;
- .2 except with respect to workers’ compensation [and property] insurance, name the Airport Authority, the County of Wayne, Michigan, consultants or other parties identified by the Airport Authority in the Supplementary Conditions or otherwise by written notice, and each of their members, officials,

- directors, officers, employees and agents, as additional insureds (collectively, the “Additional Insureds”);
- .3 be issued by an insurer licensed or approved by the Insurance Bureau of the State of Michigan, unless otherwise approved in writing by the Airport Authority;
 - .4 provide that such insurance shall be primary coverage with respect to all insureds as provided in Subparagraph 10.2.8.
 - .5 provide that the policy will not be canceled, terminated, not renewed or materially changed without 30 days’ advance written notice to the Airport Authority; and
 - .6 with respect to liability coverage, contain a standard “Severability of Interest” clause or endorsement allowing coverage for claims of one insured against another insured.

The Contractor shall furnish to the Airport Authority, prior to issuance of the first Notice to Proceed With Construction, certificates of insurance issued by each insurer, and, within 60 days thereafter, complete, certified copies of each insurance policy required by this Paragraph 10.2, and all endorsements and amendments thereto, and shall furnish to the Airport Authority copies of replacement policies or evidence of renewal of such policies at least 30 days prior to the effective date of the replacement policy or renewal.

The insurance specified herein shall be the minimum kinds and amounts to be procured. Nothing herein shall be construed to limit the Contractor from securing higher limits or broader coverages for the benefit of the Contractor, at the Contractor’s sole expense. The Contractor may make recommendations to the Airport Authority for coverages or limits other than those specified, and the Airport Authority shall have the right, in its sole discretion, to approve or disapprove such recommendations. If approved, the change will be implemented by the Airport Authority as a Change Order.

10.2.7 Airport Authority’s Insurance Responsibility/Option. Except as provided in Paragraph 10.3.2, the Airport Authority shall have no responsibility to purchase or maintain any liability, property or other insurance to protect the interests of the Airport Authority or others involved in the Contract. The Airport Authority shall have the option to delete insurance requirements imposed upon the Contractor hereunder, to procure such insurance separately, to increase or decrease the amounts of required insurance coverage, and to adjust the Contract Sum by Change Order to reflect any such deletions or adjustments.

10.2.8 Occurrence Based Coverage; Deductibles. The liability insurance required pursuant to this Paragraph 10.2 shall, to the extent commercially available, be written on an occurrence basis. All liability insurance shall include coverage for claims brought or maintained pursuant to any alternative dispute resolution procedure. The insurance purchased by the Contractor shall be considered “primary” as respects the Additional Insureds, whose own insurance, if any, shall be considered excess over that purchased by the Contractor, should there be any coverage “overlaps” or duplications between any policies maintained by the Additional Insureds and the policies maintained by the Contractor. Except as otherwise expressly provided in the Contract Documents, the Contractor shall be responsible for all losses within the deductible and retained risk limits on all policies of insurance specified in Paragraph 10.2.

10.3 GENERAL INSURANCE REQUIREMENTS

10.3.1 Release and Non-Subrogation. The Airport Authority and the Contractor each hereby waive all rights against each other, and release each other (this waiver and release applying equally to the Airport Authority and the Indemnitees) from, all claims, demands, actions, causes of action, damages, losses, costs and expenses (“claims and liabilities”) arising out of, or resulting from, any act or omission of the other party to the extent that such claims and liabilities are covered by policies of property insurance carried (or required to be carried) hereunder or policies of property insurance otherwise carried by the parties, except such rights and liabilities as the parties have to insurance proceeds, deductibles and self-insured retention amounts. The parties agree that all property insurance policies obtained pursuant to the Contract shall contain appropriate provisions whereby the insuring company or companies (i) agree to the foregoing release of liability, and (ii) waive their rights of subrogation with respect to such claims and liabilities. The Contractor shall cause all Subcontracts to contain

similar provisions in favor of the Airport Authority and the Indemnitees by which each Subcontractor releases the Airport Authority and the Indemnitees from claims and liabilities, and obtains similar releases and non-subrogation agreements from their respective insurance company.

10.3.2 *No Liability Assumed by the Airport Authority.* It is further understood and agreed that the purchasing of insurance by the Contractor or the Airport Authority, as the case may be, or the review, approval or acceptance by the Airport Authority of the policies of insurance required by the Contract, or any certificates thereof, or any failure on the part of the Airport Authority to request policies of insurance, shall not relieve the Contractor from its obligations to comply with, nor otherwise alter or affect the liability assumed by the Contractor in, the Contract. Further, the Airport Authority shall have no duty to examine such policies or certificates or to notify the Contractor if the insurance reflected in such policies or certificates is not in compliance with the Contract, nor shall the Airport Authority be liable for any error or omission or other matter concerning any party's insurance coverage, or any insurance requirements contained herein. Should the Contractor at any time neglect or refuse to provide the insurance required pursuant to the Contract, or should such insurance expire, be altered, changed or canceled and not replaced in accordance with this Article 10, the Airport Authority may, at its option, and without limitation of the other rights and remedies of the Airport Authority under the Contract, (i) declare a default under the Contract and exercise the remedies provided herein, and (ii) take all actions necessary to purchase or maintain insurance covering the risks intended to be covered by such required insurance and deduct all costs incurred by the Airport Authority in placing and maintaining, or attempting to place or maintain, such replacement insurance from amounts otherwise due to the Contractor under the Contract.

10.3.3 *Restoration, Claims Under Policies.* In the event of loss, damage or other casualty affecting the Work, the Contractor shall, unless otherwise instructed by the Airport Authority, promptly repair, replace or reconstruct the damaged or lost elements of the Work at no cost to the Airport Authority. The Contractor, on behalf of and in the name of the Airport Authority, shall be responsible for filing and negotiating all claims with respect to the Airport Authority's interest under the all-risk builder's risk insurance policy (whether maintained by the Contractor or the Airport Authority) for loss or damage to the Work. Notice of all claims made against the all-risk builder's risk insurance policy shall promptly be given to the Airport Authority. The Contractor shall have the power to adjust or settle all claims with the builder's risk insurer for loss or damage to the Work in a manner fairly protecting the interests of the Airport Authority, the Contractor and Subcontractors, subject however to the written approval of the Airport Authority.

10.3.4 *Damage or Destruction of Work.* Should all or any part of the Work be damaged or destroyed by fire, storm, lightning, flood, water (surface or subsurface), earthquake, vandalism, or other casualty before the Final Completion of the Work, the Contractor, upon written instruction from the Airport Authority, shall proceed to replace and/or repair the Work in accordance with the Drawings and Specifications. In such event, the provisions of this Contract shall remain in full force and effect, except that the Contract Sum shall be increased by Change Order by the total cost of restoring, reconstructing or replacing all damaged or destroyed Work, in accordance with Article 11, and the Construction Duration shall be extended in accordance with Article 7; provided that the Contract Sum shall not be increased to the extent the damage or destruction is covered by insurance proceeds paid to the Contractor. The Airport Authority shall have the option, in the event of damage or destruction to the Work by any of the above-mentioned causes, to terminate the Contract in accordance with Article 14.

10.3.5 *Application of Proceeds.* The proceeds of all claims under the all-risk builder's risk insurance policy required under Subparagraph 10.2.5 shall be paid directly to the Airport Authority, to be retained or distributed and applied by the Airport Authority in accordance with the payment provisions of Article 8, in reimbursement of amounts paid by the Contractor or any Subcontractor in repairing, replacing or otherwise making good the insured loss or damage.

ARTICLE 11

CHANGES IN THE WORK

11.1 CHANGES IN THE WORK

11.1.1 Without invalidating the Contract and without notice to any surety, only the Airport Authority may order changes within the scope of the Contract consisting of additions, deletions or other revisions: in the requirements of the Specifications and Drawings or other Contract Documents; in the sequences of construction; in the boundaries of the site or contract limit lines; in Airport Authority-furnished equipment, materials, or services; or directing acceleration of the Work. Such changes will be authorized in writing by Change Order, or Field Order. Upon receipt of a Change Order, or a written directive from the Airport Authority directing the Contractor to perform a change in the Work, the Contractor shall promptly proceed or continue with the work involved (based on the conditions stated in the Change Order or such directive and other applicable conditions of the Contract Documents).

11.1.2 Except as provided in this Article, no written or oral direction or order from the Airport Authority, an Airport Authority Consultant, or the Designer shall be treated as a change in the Work or entitle the Contractor to an increase in the Contract Sum or the Construction Duration because of a change.

11.1.3 If a change under this Article causes an increase or decrease in the Contractor's cost of or the time required for the performance of the Work, an adjustment in the Contract Sum or Construction Duration will be made as provided below.

11.1.4 When time does not permit following the process described in Paragraph 11.2 below, or at any time in the Airport Authority's discretion, the Airport Authority's Project Manager may direct the Contractor to perform a change in the Work prior to agreement on the terms of a Change Order. Such direction may be given by written directive approved by the Airport Authority. If so ordered by the Airport Authority, the Contractor shall promptly proceed with the change in the Work described in such order, even if the Contractor and the Airport Authority have not agreed on compensation or schedule adjustments with respect to such change and even if a Change Order shall not have been issued. Any adjustments to the Contract Sum or the Construction Duration on account of such change in the Work shall be determined as hereafter provided in this Article 11.

11.1.5 The Contractor shall maintain a current listing of pending changes and unresolved claims under this Article 11, and a copy of such listing shall be included in each Monthly Progress Report.

11.2 NEGOTIATION OF CHANGES IN THE WORK

11.2.1 In the case of a change initiated by the Airport Authority, the Airport Authority may notify the Contractor of the change using a Bulletin describing the change, and request the Contractor to submit a "Change Proposal" therefor. The Change Proposal shall be submitted within twenty (20) days after receipt of such request, and shall confirm the character and scope of work, and all elements of pricing and impact on schedule, in accordance with Paragraph 11.7. If the Contractor fails to submit a Change Proposal within twenty (20) days of a request therefore and does not have written authorization by the Airport Authority to extend the submittal time, any change in the Contract Sum or the Construction Duration will be determined by the Airport Authority in accordance with Paragraphs 11.6 through 11.13.

11.2.2 The Airport Authority and the Designer will evaluate the Change Proposal from the Contractor. The Airport Authority may either: (i) accept the Contractor's Change Proposal, in which event a Change Order shall be issued based on the Contractor's Change Proposal; or (ii) review with the Contractor its Change Proposal and attempt to reach agreement on any adjustments required therein, in which event a Change Order will be issued based on any agreed-upon adjusted Change Proposal; or (iii) reject the Contractor's Change Proposal, in which event a Change Order may be issued in accordance with Paragraphs 11.6 through 11.13, if elected by the Airport Authority.

11.2.3 The Contractor shall cooperate fully with the Airport Authority and the Designer to provide sufficient substantiation of costs and schedule impact to allow the Airport Authority to reasonably make a determination under Subparagraph 11.2.2 above.

11.3 CHANGE ORDERS

11.3.1 A Change Order duly executed by the Airport Authority and the Contractor provides for an all-inclusive settlement for all changes and all direct, indirect, supplemental, consequential and cumulative costs and delays, including acceleration, disruption, inefficiencies and other impacts, and the Contractor's signature represents a waiver of any and all rights to file a claim on account of that instrument or the change. By executing the Change Order, the Contractor represents to the Airport Authority that all Subcontractors performing Work under the Change Order have agreed to the terms of the Change Order, and the Contractor assumes full responsibility for, and shall indemnify and hold harmless the Airport Authority with respect to, any claims by Subcontractors in connection with the Change Order or the performance of the Work covered by the Change Order.

11.3.2 A Change Order duly executed by the Airport Authority, but not executed by the Contractor, shall become final and binding on the Contractor, unless the Contractor delivers to the Airport Authority written notice of a claim within twenty-one (21) days after receipt of the Change Order executed by the Airport Authority. The claim must follow the procedure and substantive requirements of Article 15.

11.3.3 The Airport Authority and the Contractor shall execute Change Orders with reasonable promptness covering changes in the Work which are ordered by the Airport Authority or agreed to by the parties, or changes in the Contract Sum or the Construction Duration which are agreed to in total or in part. Amounts due for work involved in a duly executed Change Order are allowable for inclusion in Applications for Payment, however, payment for Change Order Work is conditioned upon the receipt of a bond per Section 10.1.2 for Change Orders increasing the penalty amount of the bond.

11.4 WAIVERS

11.4.1 No request by the Contractor for an adjustment under Paragraph 11.5 nor any claim by the Contractor for an increase in the Contract Sum or other compensation or damages under Article 15 due to changes in the Work or any other matter shall be allowed for any costs or delay incurred more than twenty (20) days before the Contractor gives written notice as required by the terms thereof.

11.4.2 No request by the Contractor for an adjustment under this Article, nor any claim by the Contractor under Article 15 resulting from changes in the Work, shall be allowed if made after the date of Final Completion.

11.5 CONTRACTOR CHANGE REQUESTS

11.5.1 Except for Change Orders initiated by the Airport Authority as provided in Paragraph 11.2, the Contractor shall not be entitled to any adjustment in the Contract Sum or to any extension of the Construction Duration as a result of any act or failure to act by the Airport Authority or the Designer, the happening of any event or occurrence, or any other cause, unless the Contractor shall have first submitted to the Airport Authority a Contractor Change Request (including a Contractor Change Notice), as hereafter specified, and shall have complied with the other applicable requirements of the Contract.

11.5.2 If the Contractor believes that a change has occurred by reason of any work performed or materials furnished, or by reason of any direction or interpretation by the Airport Authority or the Designer, or by reason of any other event, circumstance or occurrence, or if the Contractor wishes to make a claim for damages by reason of any act or omission of the Airport Authority or the Designer, including any order by the Airport Authority to stop the Work pursuant to Article 14 where the Contractor was not at fault, or if for any other reason the Contractor believes that it is necessary to adjust the Contract Sum or the Construction Duration or otherwise modify the terms of the Contract Documents, the Contractor shall submit to the Airport Authority a Contractor Change Notice (hereafter defined) and may request that a Change Order be issued by submitting to the Airport Authority a

“Contractor Change Request” prepared and submitted in accordance with the provisions of this Paragraph 11.5. The Contractor Change Notice and Contractor Change Request shall be submitted by the Contractor before proceeding to execute the work involved, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 9.4.

11.5.3 A “Contractor Change Notice” shall mean a written notice to the Airport Authority of the Contractor’s intent to submit a Contractor Change Request. The Contractor Change Notice must be submitted as soon as practicable after the beginning of the event or circumstance upon which the Contractor Change Request is based, and in any event not later than five (5) calendar days following the beginning of the event or circumstance upon which the Contractor Change Request is based, and shall contain as much information concerning the event or circumstance and its effect on cost or schedule as is reasonably available to the Contractor within such time period.

11.5.4 A “Contractor Change Request” must be in writing, must detail the character and scope of the work involved and provide clear and detailed justification that a change has occurred or that the Contractor is otherwise entitled to an adjustment in the Contract Sum or the Construction Duration, and shall include the applicable Contract Document references supporting the Contractor’s claim, the nature of the costs or schedule extension involved and the amount of the potential claim or schedule extension, and the efforts taken and to be taken by the Contractor to prevent or minimize costs or schedule extension. The Contractor Change Request must contain all information and certifications required to be included in a Change Proposal as provided in Paragraph 11.7.

11.5.5 All Contractor Change Requests submitted by the Contractor shall provide sufficient detail for the Airport Authority to understand the basis for, and amount of, the adjustment in compensation or schedule extension requested in the Contractor Change Request. The Contractor shall furnish, within 5 calendar days after request from the Airport Authority or the Designer in writing, such further information and details including, but not limited to, books of account, records and other documents of the Contractor and of its Subcontractors, as may be required by the Airport Authority or the Designer to determine the facts or issues of contention involved in the Contractor Change Request. The Contractor’s failure to deliver such information shall be sufficient cause for rejecting any Contractor Change Request, unless such time is extended in writing by the Airport Authority.

11.5.6 If the Airport Authority determines based on the Contractor Change Request that a change in the Work has occurred, the Airport Authority may request any additional information necessary to evaluate the Contractor’s proposal, and the requirements and procedures of this Article 11 shall apply. If the Airport Authority determines that no change has occurred, the Airport Authority’s determination shall be final and binding on the Contractor unless the Contractor objects to such determination by written notice to the Authority within 21 days after receipt of notice of said determination in accordance with the provisions of Article 15. If the Airport Authority fails to notify the Contractor as to its determination with respect to a Contractor Change Request within 30 days after receipt of a full and complete Contractor Change Request as provided above, such failure shall be deemed to constitute a determination by the Airport Authority that no change has occurred, and such deemed determination shall be effective as of the last day of such 30-day period. The Contractor shall continue to diligently perform the affected Work and comply with any decision of the Airport Authority, pending final resolution of the matter.

11.5.7 Failure of the Contractor to comply strictly with the notice requirements, procedures and time periods set forth in this Paragraph 11.5 shall be conclusively deemed to constitute a waiver by the Contractor of any claim or any other right to an adjustment of the Contract Sum or the Construction Duration with respect to any work or any other occurrence, event or circumstance which is the subject of a Contractor Change Request, Change Proposal or other claim of the Contractor.

11.6 CHANGES IN CONTRACT SUM OR CONSTRUCTION DURATION

11.6.1 The Contract Sum or the Construction Duration shall be changed only by Change Order.

11.6.2 Nothing contained in this Article 11 shall be interpreted to permit or recognize a claim by the Contractor for any costs, damages or increase in the Contract Sum arising out of or based on a delay in the progress of the Work, whether caused by any Excusable Delay or by any other cause.

11.7 CONTRACTOR CHANGE PROPOSALS

11.7.1 Change Proposals shall be due from the Contractor within 20 days of receipt of the Airport Authority's Bulletin, notice or order giving rise to the Change Proposal (unless the Airport Authority allows an additional period), and shall remain firm for a period of not less than 60 days from delivery of the Change Proposal. Any delay in submission will not justify or constitute the basis for an increase in Contract Sum or Construction Duration. Change Proposals shall be submitted on forms acceptable to the Airport Authority.

11.7.2 Change Proposals shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential, serial and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite the Contractor's reasonable and diligent efforts to mitigate them.

11.7.3 Where a change in the Contract Sum is to be determined on the basis of a lump sum or on the basis of the "cost of the work involved," the Contractor's itemized estimates shall detail all applicable elements of cost, including, but not limited to, labor man-hours and payroll costs, quantities, crew mixes, production rates, material costs, Subcontractor and Supplier costs, equipment costs, and supplemental costs. Where a change in the Contract Sum arises from changes in the schedule of all or part of the Work, or where a change in the Construction Duration is sought, the submittal shall include a detailed schedule impact analysis based on the Baseline CPM Schedule, and shall cover all applicable elements affecting the work involved, including, but not limited to, labor crews, craft levels, equipment utilization, Work during other than normal working hours, production rates, shop drawing preparation, submittal and review, material and equipment delivery, and testing and start-up times. With respect to work during other than normal hours, the labor charges associated with such work shall consist of straight time wages and burden plus the appropriate overtime or shift premium with no additional burden (i.e., fringe benefits) on the premium portion.

11.7.4 Change Proposals shall cover all aspects of the work involved, whether relating to deleted, added, revised, or impacted items of Work. Amounts for Subcontractors or Suppliers at any tier shall be equally supported. The Contractor shall review all quotations from Subcontractors, and shall assure that pricing is fair and reasonable before forwarding such proposed pricing to the Airport Authority. All cost breakdowns shall provide sufficient detail for the Airport Authority to understand the basis for, and amount of, the adjustment in compensation requested. The Contractor shall furnish, within five (5) working days after the Airport Authority's request, such further information and details including, but not limited to, books of account, records and other documents of the Contractor and the Subcontractors, as may be required by the Airport Authority or the Airport Authority's lender(s) or partners, to permit the Airport Authority's analysis of all items related to the proposed change.

11.7.5 No claim or proposal for an adjustment in the Contract Sum or the Construction Duration shall be valid unless submitted in accordance with this Article.

11.8 METHODS FOR DETERMINING ADJUSTMENTS IN CONTRACT SUM

11.8.1 The methods to be used to determine an adjustment in the Contract Sum necessitated by changes ordered or negotiated pursuant to these provisions, including work covered by a claim, also referred to herein as the "work involved," are limited to the following:

- .1 Where the work involved is covered or is of the same character as work covered by lump sum prices in the Contract Documents – on the basis of those lump sum prices;
- .2 Where the work involved is covered by or is of the same character as any unit price work specified in the Contract Documents – by application of those unit prices to the quantities of the items involved (subject to the following provisions of this Paragraph 11.8 and other provisions of the Contract Documents covering unit price work);

- .3 Where the work involved is not covered by either of the preceding methods – by mutual acceptance of a lump sum price negotiated on the basis of the Contractor's itemized estimate of the anticipated cost of the work involved, determined as specified in this Article, and Contractor's fee determined as provided in Paragraph 11.12;
- .4 Where the work involved is not covered by either of the first two methods, and the Airport Authority and the Contractor cannot achieve agreement on the anticipated cost of the work involved - on the basis of the [Airport Authority's/Designer's] determination of the fair estimated cost or value of the work involved, and a Contractor's fee determined as provided in Paragraph 11.12;
- .5 Where the work involved is not covered by either of the first two methods, and the Airport Authority directs the Contractor to proceed with the work involved with payments to be made therefor on the basis of actual costs – on the basis of the actual cost of the work involved, determined as specified in this Article and a Contractor's fee, if any, determined as provided in Paragraph 11.12;
- .6 Where the work involved is not covered by any of the preceding methods, and when payment is to be determined by a court of competent jurisdiction – it is agreed that the actual cost method referred to in Clause .5 shall be an appropriate method for determining the cost of the work involved.

11.8.2 In computing either anticipated or actual costs, the phrase “cost of the work involved” means the sum of all incremental costs which would be, or actually were, necessarily incurred by the Contractor in the proper performance of the work involved. Those costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the appropriate items for labor, material/equipment and subcontracted work, and supplemental costs specified below.

11.8.3 Unit prices stated in the Contract Documents shall, unless otherwise determined by the Airport Authority, be used to determine the adjustments in the Contract Sum as a result of changes in the scope or quantity of work for which unit prices are specified. Unless otherwise stated in the Contract Documents, such unit prices shall be deemed to include a proportionate share of the Contractor's and all Subcontractors' overhead, profit, bonds and insurance, as well as all labor, materials, equipment, delivery and disposal to perform the work item complete, and all other direct or indirect expenses of the Contractor and Subcontractors, as applicable to that class of work, and shall be the exact amount per unit to be paid to the Contractor in the case of increases in the quantity of work, or refunded to the Airport Authority in the case of decreases.

11.8.4 Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the Airport Authority's option to require the adjustment of the Contract Sum on account of a change in work covered by unit prices to be determined by one of the other methods stated in Subparagraph 11.8.1. If the Airport Authority elects to determine the adjustment based on unit prices, the Authority's Representative will determine the actual quantities and classifications of unit price work performed by the Contractor. If the nature of the work is such that its extent cannot readily be measured after the completion of such work or any subsequent work, the Contractor shall keep daily records, available at all times to the Designer for inspection, of the actual quantities of such work put in place, and delivery receipts or other adequate evidence, acceptable to the Designer, indicating the quantities of materials delivered to the site for use in such unit price work, and distinguishing such from other similar material delivered for use in work included in the base Contract Sum. If so required by the Designer, materials for use in unit price work shall be stored apart from all other materials on the Project.

11.8.5 The Authority's Representative will review with the Contractor the Authority's Representative's determinations on quantities and classifications of unit price work before rendering a written decision (by recommendation of an Application for Payment or otherwise). Once given, a particular written decision of the Authority's Representative shall be final and binding upon the Contractor, unless, within twenty-one (21) days after the date of that decision, the Contractor delivers to the Airport Authority written notice of claim in accordance with Article 15. Failure to file the notice of claim within such time period will be conclusively deemed to be a waiver of claim. The foregoing shall not be interpreted to limit or affect the rights of the Airport Authority to make adjustments in amounts included in an Application for Payment from the Contractor in accordance with the provisions of the Contract Documents.

11.8.6 If the Airport Authority elects to determine the adjustment to the Contract Sum as provided in Clauses .4, .5 or .6 of Subparagraph 11.8.1 above, or if the method of determining the adjustment has not been established before the work is begun, the Contractor shall keep detailed daily records of labor and materials costs applicable to the work as further provided below, which shall be delivered to the Authority's Representative. Where the adjustment to the Contract Sum will or may be determined on this (cost) basis, the Contractor shall not begin performance of the Work involved unless or until the Airport Authority has determined, in writing, that the Contractor's accounting system: (i) permits timely development of all cost data in a form reasonably acceptable to the Airport Authority, and (ii) is adequate to allocate costs in accordance with generally accepted cost accounting principles.

11.9 LABOR, MATERIAL/EQUIPMENT AND SUBCONTRACT COSTS

11.9.1 Payroll costs shall be included for trade labor and foremen in the direct employ of the Contractor assigned to the site and engaged in furnishing and incorporating materials or equipment in the work involved. Payroll costs shall include wages plus the necessary labor burdens, which may include social security, unemployment, workers' compensation, health and retirement benefits, vacation and holiday pay, and other payments pursuant to union agreements. When determining payroll costs under Clause .5 of Subparagraph 11.8.1, daily time sheets, certified at the end of each day by the Authority's Representative and signed by the Contractor, shall be the record upon which actual payroll costs shall be based. When determining payroll costs under Clause .6 of Subparagraph 11.8.1, daily time sheets shall be valid only if they expressly correlate to the work involved and if made when the work involved was performed. For purposes of determining payroll costs under Clause .5 or Clause .6 of Subparagraph 11.8.1, the Contractor is responsible for notifying the Authority's Representative prior to starting work so that the Authority's Representative, with the Contractor, may verify and certify the daily time sheets. If the Contractor performs the Work without such prior notification to the Authority's Representative, the Contractor does so at its own risk; the Contractor will not be compensated based on daily time sheets that have not been verified and certified by the Authority's Representative .

11.9.2 Payments by the Contractor to Suppliers for all material and equipment in the work involved, including transportation and storage costs, and necessary Suppliers' field services shall be included. All cash discounts shall accrue to the Airport Authority, if the Airport Authority advances funds to the Contractor with which to make payments. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the Airport Authority, and the Contractor shall make provisions so that they may be obtained. When required by the Airport Authority, the Contractor shall obtain competitive bids from Suppliers and shall deliver such bids to the Authority's Representative. When determining actual material and equipment costs, actual invoices segregating items associated with the work involved shall be the record upon which actual costs shall be based.

11.9.3 Payments by the Contractor to Subcontractors for work involved performed by Subcontractors shall be included. If required by the Airport Authority, the Contractor shall obtain competitive detailed bids from three Subcontractors and shall deliver them to the Airport Authority who will then determine which bid will be selected. When determining Subcontractor costs at any tier, the Subcontractor's cost shall be determined in the same manner as the Contractor's cost of the work involved. Where the value of work performed under a Change Order is determined by either a lump sum price or by the cost of the work involved, the amount allowed to a Subcontractor who performs the work for overhead, superintendence and profit ("mark-up") shall not exceed ten percent (10%) of the net cost of the work. If the Subcontractor who performs the work is not a first tier Subcontractor, the first tier Subcontractor shall be allowed a mark-up not to exceed five percent (5%) of the net cost of the work. The aggregate amount of all mark-ups to Subcontractors, regardless of the number of tiers of Subcontractors involved or the amount of the Change Order, shall not exceed fifteen percent (15%). Such mark-ups shall include all costs and expenses not included in the cost of the change in the work specified in Paragraphs 11.9 through 11.11. No mark-up shall be allowed on insurance, bond premiums or sales taxes.

11.9.4 The Contractor shall not subcontract any work under a Change Order unless work under the Contract of a similar type was previously subcontracted; and Subcontractors will not be allowed to further subcontract any work under a Change Order without the written approval and acceptance of the Airport Authority, unless work under

the Contract of a similar type was previously subcontracted by them. All subcontracts shall be subject to the provisions of this Article insofar as applicable.

11.10 EQUIPMENT COSTS

11.10.1 Equipment costs shall be included for rented, leased or owned equipment required solely in connection with the work involved in the change, provided the individual construction equipment or machinery has a value in excess of \$1,000.00. Transportation, loading and unloading, installation, dismantling and removal costs shall be included only if such equipment is or was transported to the site solely to perform the work involved. All equipment costs shall cease when the equipment is no longer necessary to perform the work involved. Payroll costs for craft labor operating the equipment shall be as provided in Subparagraph 11.9.1. Equipment costs shall be computed using the same accounting and estimating rules regardless of whether related to added or deleted items of work.

11.10.2 When determining equipment costs under Clause .5 of Subparagraph 11.8.1, daily records listing the equipment units, operators, and actual usage, and certified at the end of each day by the Authority's Representative and signed by the Contractor, shall be the record upon which actual equipment use shall be based.

11.10.3 Rented or owned equipment at the site required solely in connection with the work involved in the change shall, to the extent not in actual use as a direct result of the change, be paid at the standby rates for rented equipment as specified in Clause .2 of Subparagraph 11.11.1. In no event shall the idle time claimed in a day exceed the established working schedule. Payments for idle equipment shall come due only as long as the equipment was idled solely by the actions of the Airport Authority or the Designer, and where the idle period exceeds that normally experienced for such equipment.

11.10.4 The Airport Authority shall have the right to require the Contractor to purchase any item of equipment (i.e., rather than renting the same). In such event the purchase price of such item shall be a chargeable cost. The Contractor shall maintain such equipment in good working order and condition during the term of this Agreement, and upon final completion or earlier termination of this Agreement (or, if requested by the Airport Authority, upon completion of use of such item on the Project), the Contractor shall deliver the same, together with a warranty bill of sale and such other documents as may be necessary or desirable to legally transfer title free and clear of all encumbrances and liens, to the Airport Authority.

11.11 RENTED OR LEASED EQUIPMENT; OWNED EQUIPMENT

11.11.1 Except as provided below, for equipment rented or leased, the Contractor shall be entitled to amounts based on negotiated rental or lease rates, but in no event shall the amounts exceed the hourly rates developed from the "Rental Rate Blue Book" published by Dataquest, Inc. in effect at the time of equipment usage. In addition to the rental or leasing rate, operating costs shall not exceed the estimated hourly rate in the aforementioned guide.

- .1 Hourly rates shall be developed by dividing the monthly Blue Book rates by 176 hours per month (the "weekly," "hourly," and "daily" rates listed in the Blue Book shall not be used). Rates in all cases shall be adjusted by application of the Rate Adjustment Tables (machine age adjustment) plus adjustments to eliminate Equipment Overhead plus Regional Adjustments.
- .2 Standby rates shall be computed by using the full cost-of-facilities capital (CFC) hourly cost plus one half the hourly depreciation rates as used in the initial hourly calculation in Clause .1 above.
- .3 The equipment rate for usage in excess of eight hours per day shall be 50% of the base hourly rate as established in the initial hourly calculation in Clause .1 above. The rates used for billing purposes will be those most economical to the Airport Authority based on the circumstances of actual usage and all applicable credits and discounts.

11.11.2 For equipment rented or leased from lessor firms associated with or owned by the Contractor, the Contractor shall be entitled to reimbursement as though the equipment was owned equipment, as specified below.

11.11.3 For equipment owned by the Contractor, the Contractor shall be entitled to costs based on its normal accounting practices, but in no event shall those costs plus the estimated operating costs exceed the hourly rates as established in Subparagraph 11.11.1 above.

11.12 CONTRACTOR'S FEE

11.12.1 The Contractor's fee on changes in the Work shall not to exceed ten percent (10%) on Work performed by the Contractor's own forces, and not to exceed five percent (5%) on Work performed or furnished by Subcontractors or Suppliers. Such Contractor's fee shall include, and shall represent full compensation to the Contractor on account of, the Contractor's profit, home office overhead, so-called general conditions and general requirement costs and all other site-based overhead costs, items described in Paragraph 11.13, and all other direct or indirect costs, expenses, liabilities and risks incurred by the Contractor in connection with such change in the Work for which the Contractor is not compensated through Paragraphs 11.9, 11.10, and 11.11. The Contractor's fee shall not be payable on bond premiums, insurance premiums, permit fees, any increase in the original Contract Sum as a result of substitutions of equipment or materials which are functionally similar to equipment and materials originally specified, or increases in the cost or quantity of allowance items.

11.12.2 The credit to the Airport Authority for any change that results in a net decrease in cost will be the amount of the actual net decrease in cost determined as provided herein plus a deduction in the Contractor's fee by an amount equal to seven percent (7%) of such net decrease.

11.12.3 When both additions and credits are involved in any change, the adjustment in the Contractor's fee shall be computed on the net change in the cost of the work involved.

11.13 COSTS NOT TO BE REIMBURSED

11.13.1 Where the change in the Contract Sum is to be determined on the basis of the "cost of the work involved," allowable costs shall not include the following: (i) salaries, bonuses and other compensation of and costs related to the Contractor's management and executive personnel wherever stationed; (ii) expenses of the Contractor's principal office or other offices (other than the site office); (iii) overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead, bookkeeping and accounting, and drafting and printing costs; (iv) the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work; (v) costs of machinery and equipment owned or rented by the Contractor, except as specifically provided above; (vi) costs incurred due to the fault, negligence or breach of contract of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, injury to persons or damage to property, correction or repair of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work, except to the extent reimbursement is received through the recovery of insurance proceeds; (vii) penalties, fines or costs imposed by governmental authorities in connection with or resulting from any knowing violation of or noncompliance with Applicable Laws by the Contractor or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable; (viii) legal fees incurred by the Contractor, unless the same are incurred at the written direction, or with the prior written approval, of the Airport Authority; (ix) travel or meal expenses and personnel relocation expenses; (x) any cost incurred by the Contractor as a result of knowing violation of or failure to comply with the Contract Documents by the Contractor or any Subcontractor; and (xi) any other cost not specifically and expressly described in Paragraphs 11.9 through 11.11.

11.14 RECORDS

11.14.1 Without limitation of the foregoing provisions of this Article 11, whenever the Contractor is to be compensated for changes in the Work on the basis of the actual "cost of the work involved" ("T&M Work"), the Contractor shall maintain separate accounts, by job order or other suitable accounting procedure, of all costs incurred allocable to the particular T&M Work. The Contractor shall maintain a computerized accounting system, acceptable to the Airport Authority, in which current information as to the status of all change notices, change

directives, Change Proposals, Contractor Change Requests and Change Orders, and all T&M Work, is maintained. The Contractor shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of T&M Work and the costs of other Work.

11.14.2 The Contractor shall prepare report sheets in duplicate identifying T&M Work performed on each day and shall furnish such report to the Authority's Representative no later than the end of the second following work day. The daily report sheet shall itemize the costs described in Paragraphs 11.9 through 11.11. The daily report sheets shall provide names or other identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number and hours operated of equipment.

11.14.3 Material charges shall be substantiated by copies of Supplier's invoices, and such additional supporting information as the Authority's Representative may request. Such invoices shall be submitted with the daily report sheets, or, if not yet available, shall be submitted with subsequent daily report sheets. Should Supplier's invoices not be submitted within 60 days after the date of delivery of the material or 15 days after completion of the T&M Work, whichever comes first, the Airport Authority shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned, delivered to the location of the Work, less any discounts as provided above.

11.14.4 Such daily report sheets shall be signed by the applicable Subcontractor(s) and the Contractor's Project Manager and shall be certified by them to be current and correct.

11.14.5 The Authority's Representative will compare the Airport Authority's records with the daily report sheets furnished by the Contractor, make any necessary adjustment, and compile the costs of work paid for on a T&M basis on daily T&M Work report forms prepared by the Authority's Representative. When these daily reports are agreed upon and signed by both parties, they shall become the basis of payment for the Work performed, but shall not preclude adjustment based on a subsequent audit.

11.14.6 The Contractor's original cost records pertaining to Work paid for on a T&M basis shall be made available for inspection or audit by representatives of the Airport Authority.

11.15 DIFFERING SUBSURFACE OR LATENT PHYSICAL CONDITIONS

11.15.1 If, during the progress of the Work, the Contractor discovers that the actual subsurface or other latent and unknown physical conditions encountered at the site differ substantially from those shown or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents ("differing site conditions"), the Contractor may request an equitable adjustment in the Contract Sum on account of the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the Contractor to the Airport Authority within three (3) calendar days after such conditions are discovered and before such conditions are disturbed. Upon receipt of such a claim from the Contractor, or upon its own initiative, the Airport Authority shall make an investigation of such physical conditions, and, if they differ substantially from those shown or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Airport Authority shall make an equitable adjustment in the Contract Sum and the Contract Documents shall be modified in writing accordingly. If the Contractor requires additional time for completion of the Work as a result of the existence of such differing site conditions, the Contractor shall request an adjustment in the Construction Duration as provided in the Contract Documents. No adjustment in Contract Sum or Construction Duration shall be permitted, however, in connection with differing site conditions that were observed or disclosed (or reasonably should have been observed or disclosed) in the course of the Contractor's prior inspections, tests, investigations or other preconstruction services that the Contractor performed or had the opportunity to perform in connection with the Work.

11.16 ADJUSTMENT IN THE CONSTRUCTION DURATION

11.16.1 If the Contractor claims that any change in the Work or any other occurrence or event causes a delay in completion of the Work, the Contractor's entitlement to an adjustment of the Construction Duration shall be established only as provided for in Paragraph 7.4.

11.17 EXCLUSIVE REMEDIES

11.17.1 The procedures specified in this Article 11, Paragraph 7.4 and Article 15 are the Contractor's exclusive remedies for costs, damages or other liabilities arising from changes in the Work, delays in the Work or any other occurrence or event, except as expressly otherwise provided in the Contract Documents. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that the Airport Authority has been unjustly enriched by an alteration or change to the Work, shall be the basis of any claim for an increase in the Contract Sum or an extension of the Construction Duration. Except for extensions that may be granted to the Contractor in the time for preparation of Change Proposals or Contractor Change Requests (or the time for submission of information or data to allow the Airport Authority or its consultants to evaluate them), no representatives of the Airport Authority are authorized to alter the procedures, waive or extend time periods, waive notices or provide for alternative procedures applicable to the Contractor under this Article 11, Paragraph 7.4 or Article 15; and no such alteration or waiver shall be binding upon the Airport Authority unless expressly approved in writing by the Chief Executive Officer of the Airport Authority.

11.18 MINOR CHANGES IN THE WORK

11.18.1 The Designer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Construction Duration and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Designer's Supplemental Instructions, and shall be binding on the Contractor. The Contractor shall carry out such Designer's Supplemental Instructions promptly.

ARTICLE 12

CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Designer or the Airport Authority, or contrary to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Designer or the Airport Authority, be uncovered for observation by the Designer and/or the Airport Authority and replaced at the Contractor's expense.

12.1.2 If any other portion of the Work has been covered which neither the Designer nor the Airport Authority has specifically requested to observe prior to being covered, the Designer or the Airport Authority may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Airport Authority. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Airport Authority or a separate contractor as provided in Article 6, in which event the Airport Authority shall be responsible for the payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct all Work rejected by the Designer or the Airport Authority as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial

Completion or Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Designer's and other Airport Authority's consultants' additional services made necessary thereby, and any other loss, cost or damage to the Airport Authority resulting from such failure or defect.

12.2.2 Without limiting any other rights which the Airport Authority has hereunder or pursuant to law, if, within the Correction Period (as hereinafter defined) after the date of Substantial Completion of the Work or portion thereof designated by the Airport Authority (provided, that with respect to punchlist work the Correction Period shall commence upon completion of such punchlist items), or within the Correction Period after acceptance by the Airport Authority of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable guarantee or warranty required by or referred to in the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct such defective work promptly after receipt of a written notice from the Airport Authority to do so, and shall reimburse the Airport Authority for any expenses it shall have incurred in inspecting or testing such portion of the Work. As used herein, the "Correction Period" shall mean (i) in the case of materials and equipment, one year, or such longer period as may be prescribed by law or by the terms of any special guarantee or warranty required by or referred to in the Contract Documents or provided by the vendor, and (ii) in the case of workmanship, two years. The obligations provided in this Paragraph 12.2 shall survive termination of the Contract and the making of final payment hereunder.

12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or nonconforming and which have not been corrected under Paragraph 3.4 or Subparagraphs 12.2.1 and 12.2.2, unless removal is specifically waived in writing by the Airport Authority.

12.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Paragraph 3.4 or Subparagraphs 12.2.1 and 12.2.2, the Airport Authority may correct it in accordance with Paragraph 2.3. In addition (and without limitation), if the Contractor does not proceed with the correction of defective or nonconforming work within a reasonable period of time (fixed by the Airport Authority in writing) after receipt of a written notice from the Designer or the Airport Authority to correct such Work, the Airport Authority may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Airport Authority may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Designer's and Airport Authority's consultants' additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order or through appropriate legal remedies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Airport Authority.

12.2.5 The Contractor shall bear the cost of making good all work of the Airport Authority or separate contractors destroyed or damaged by such correction or removal.

12.2.6 Without limitation of the foregoing, no additional charge shall be made by the Contractor or by any Subcontractor for attending meetings at the site to diagnose problems or to instruct the Airport Authority's personnel in the proper operation or maintenance of the Work, or for making initial or seasonal adjustments (not including normal maintenance) of mechanical systems or other movable work during the period of one year following Substantial Completion. The Contractor shall provide such service promptly upon notice from the Airport Authority. In case of emergency, service shall be provided as necessary to avoid loss or damage or to maintain normal use of the premises. The Contractor shall furnish to the Designer and to the Airport Authority a list of names and telephone numbers, with a back-up name and telephone number, covering each area of potential emergency.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.4 hereof, or under law. The establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations, other than its obligations under this Paragraph 12.2 to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

12.3.1 If the Airport Authority prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be implemented whether or not final payment has been made.

ARTICLE 13

PARTIAL USE OR OCCUPANCY

13.1 AIRPORT AUTHORITY'S RIGHT TO USE AND OCCUPY

13.1.1 The Airport Authority or its other contractors shall have the right to use and occupy spaces, areas, systems and other portions of the Work prior to completion and acceptance of all the Work or of other portions of the Work, provided that such use or occupancy shall not unreasonably interfere with the Contractor's operations nor delay the Contractor in completing the entire Work. If the Airport Authority desires to exercise its right of partial occupancy and use under this Paragraph 13.1, the Airport Authority shall give reasonable notice thereof to the Contractor, and the Contractor shall cooperate with the Airport Authority in providing facilities reasonably required for such use.

13.1.2 If the Airport Authority's partial use and occupancy takes place after expiration of the Construction Duration and is made necessary as a result of unexcused delays by the Contractor in achieving Substantial Completion, then, without limitation of any other rights or remedies of the Airport Authority under the Contract Documents, all additional costs in connection with such partial use and occupancy shall be the responsibility of the Contractor. If the Airport Authority's partial use and occupancy shall occur prior to expiration of the Construction Duration, and is exercised for the convenience of the Airport Authority, then the Airport Authority shall be responsible for additional costs made necessary by reason of such partial use and occupancy, and the Contractor may make a claim for such additional costs as provided in the Contract Documents. Mutually acceptable arrangements shall be made between the Airport Authority or its other contractors and the Contractor with regard to procedures, terms and conditions governing the operation and maintenance of such facilities as may be utilized for the benefit of the Airport Authority or its other contractors, and, if the exercise of such right to partial use and occupancy occurs prior to the Substantial Completion Date, the Airport Authority will assume proportionate and reasonable responsibility for operation of systems, equipment and/or utilities required in connection with such use, including proportionate and reasonable expenses of operation incidental thereto, and mutually acceptable arrangements shall be made as to guarantees and warranties affecting designated portions or elements of the Work associated therewith.

13.2 PARTIAL USE NOT ACCEPTANCE

13.2.1 The Airport Authority's use or occupancy of such designated areas or portions of the Work prior to completion and acceptance of all or portions of the Work pursuant to Paragraph 13.1 shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents, nor relieve the Contractor from its obligation to complete the Work, or its responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work, nor from other unfulfilled obligations or responsibilities of the Contractor under the

Contract. If, however, damage results to such designated areas or portions of the Work, in whole or in part, from any act of the Airport Authority, then the Airport Authority will assume its proportionate responsibility for such damage, to the extent that such damage is not covered by insurance provided in accordance with the terms of the Contract Documents.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 Subject to Subparagraph 14.1.2, the Contractor may terminate the Contract if the Work is stopped for a period of 180 days through no act, fault or negligence of the Contractor or a Subcontractor, their agents or employees or any other persons performing portions of the Work, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction preventing continuance of the Work.
- .2 an act of government, such as a declaration of national emergency, making necessary material or equipment unavailable;
- .3 if the Airport Authority has wrongfully not made payment as provided in the Contract Documents;
or
- .4 if repeated suspensions, delays or interruptions by the Airport Authority or the Designer as described in Paragraph 14.3 below constitute in the aggregate more than 180 days in any 365-day period.

14.1.2 If one of the above reasons exists, the Contractor, if not in default hereunder, may give the Airport Authority written notice of the Contractor's intention to terminate the Contract and if, within 30 days after the Airport Authority's receipt of such notice, the Work shall not have resumed, or the default of the Airport Authority shall not have been cured or action by the Airport Authority to effect such cure shall not have been commenced within such 30 day period and diligently pursued to completion, as the case may be, then the Contractor may terminate the Contract by written notice and recover from the Airport Authority payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including a reasonable fee (not to exceed the Contractor fee set forth in Article 11, based upon the percentage of Work completed).

14.2 TERMINATION BY THE AIRPORT AUTHORITY FOR CAUSE

14.2.1 If (i) a petition is filed by the Contractor, or against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or such a petition is filed against the Contractor without its consent and is not dismissed within sixty (60) days, or within ten (10) days if the Contractor fails to furnish to the Airport Authority evidence reasonably satisfactory to the Airport Authority that the petition or proceeding is without merit; or (ii) a receiver, trustee, liquidator, custodian or the like appointed (with or without the Contractor's consent) with respect to the Contractor or takes possession of all or any substantial portion of its assets, or the Contractor makes an assignment for the benefit of creditors; or (iii) the Contractor becomes insolvent or is generally not paying its debts as they become due, or there has been a material adverse change in the financial condition of the Contractor; or (iv) the Contractor's surety company shall refuse to issue a labor or material payment or performance bond (or to amend any such bond to increase the penal sum thereof) or other similar guarantee of performance with respect to the Contract; or (v) due to the fault of the Contractor: (a) the Work shall be unreasonably delayed or discontinued, or (b) the execution of the Work ceases for more than ten days, or (c) the Work is delayed so that, in the Airport Authority's reasonable, good faith judgment, the Work cannot be completed on or prior to the expiration of the Construction Duration; or (vi) the Contractor fails to correct defective Work as required by the Contract Documents or otherwise defaults in its obligation to perform the Work in a skilled and expeditious manner, or refuses or fails to supply sufficient labor,

materials, equipment and facilities to assure the proper progress of the Work; or (vii) the Contractor fails to make prompt payment to any Subcontractors, or for materials or labor, or fails to remove, by bonding or otherwise, any lien recorded or suit commenced by any Subcontractors or supplier against the Airport Authority or the site; or (viii) the Contractor disregards in any material respect laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (ix) the Contractor fails to comply with the instructions or directions of the Airport Authority or the Designer given in accordance with the terms of the Contract Documents; or (x) the Contractor otherwise violates or fails to comply with any material provision of the Contract Documents:

then, and in any such event, the Airport Authority may give notice of such default to the Contractor and, if the Contractor fails to cure such default within seven (7) days after the date the Contractor receives such notice, the Airport Authority may, without prejudice to any other right or remedy, terminate the Contract, or any portion of the Contract that the Airport Authority determines to be affected by the default, or may forebear termination of the Contract and direct the Contractor to discontinue the Work or any designated portion thereof, and, in either case, the Airport Authority may take possession of the site or any portion thereof and possession and use of any and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work or any portion thereof by whatever method it may deem expedient, and hold the Contractor and its sureties liable in damages for breach of the Contract. In either such case the Contractor shall not be entitled to receive any further payment until the Work is fully completed. The Airport Authority shall not be liable for any depreciation, loss or damage to such materials, equipment or tools during such use thereof, nor thereafter prior to removal thereof by the Contractor after completion of the Work. The Airport Authority may, at its option, require or permit the Contractor's surety or sureties to complete the Work in accordance with the Contract Documents. The Contractor shall continue performance of the Contract to the extent not terminated pursuant to the provision of this Article.

14.2.2 When the Work is fully completed, if the costs incurred by the Airport Authority in finishing the Work, including the cost of any additional services of the Designer or other consultants of the Airport Authority and compensation for additional managerial and administrative services, additional financing, overhead and other costs, when added to the payments made to the Contractor prior to termination, exceed the Contract Sum, the Contractor or its sureties shall pay the amount of such excess to the Airport Authority with interest thereon from the date incurred by the Airport Authority until paid by the Contractor or its surety at the rate of three percent (3%) in excess of the rediscount rate then charged by the Federal Reserve Bank of Chicago. If the sum of such costs and payments is less than the Contract Sum, the Contractor shall be paid for any costs, as certified by the Designer and approved by the Airport Authority, incurred by the Contractor but not paid for prior to the termination, to the extent that such payment does not cause the total of payments to the Contractor when added to the cost of finishing the Work to exceed the Contract Sum, and any balance shall be retained by the Airport Authority.

14.2.3 In case of such termination of the Contract pursuant to this Article 14, the Airport Authority may, at its election, assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with the Work. Without limiting the generality of the foregoing, the Airport Authority shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of such assumption or assignment by the Airport Authority, no such Subcontractors shall have any claim against the Airport Authority or such third party for Work performed by such Subcontractors or other matters arising prior to termination of the Contract, and the Airport Authority or such third party, as the case may be, shall be liable only for obligations to the Subcontractors arising after such assumption. Should the Airport Authority so elect, the Contractor shall execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as the Airport Authority may require, for the purpose of fully vesting in itself the rights and benefits of the Contractor under such Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the Airport Authority for expenses and damages suffered by the Airport Authority as a result of any default, acts or omissions of the Contractor.

14.3 SUSPENSION OR TERMINATION BY THE AUTHORITY FOR CONVENIENCE

14.3.1 The Airport Authority may at any time, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Airport Authority may determine. In such event, the Contractor shall continue to prosecute that part of the Work not suspended, delayed or interrupted and shall properly protect and secure that part of the Work so suspended, delayed or interrupted, so far as is necessary in the Contractor's reasonable opinion. The Contractor also shall exercise due care in storing all materials in such a manner so as not to become an obstruction, nor become damaged in any way, and shall provide suitable drainage by opening ditches, shoulder drains, etc., and shall erect temporary structures where necessary. Work suspended by order of the Airport Authority shall not be resumed until permitted by written order of the Airport Authority.

14.3.2 The Contractor at its own volition shall not suspend the Work or remove any equipment or materials required for further prosecution of the Work without written authority from the Airport Authority.

14.3.3 Notwithstanding anything to the contrary contained in this Contract, if a suspension under this Paragraph 14.3 is for a period of ninety (90) days or less, there shall be no adjustment to the Contract Sum. Construction Duration may be adjusted in accordance with Section 7.4. If the suspension period exceeds ninety (90) days, then the Contract Sum and the Construction Duration shall be equitably adjusted. The Contractor shall be paid reasonable standby fees and reasonable standby fees of Subcontractors, provided said fees are authorized in advance by the Airport Authority upon written request from the Contractor. However, no payment or extension of the Construction Duration shall be made under this Paragraph to the extent that any Work or Subcontract is, was, or could have been suspended, delayed, or interrupted under any other provision of the Contract Documents or by fault of the Contractor or any Subcontractor.

14.3.4 In addition, the Airport Authority may at any time upon at least seven days' written notice terminate the employment of the Contractor with respect to the Work or any portion thereof. If the Airport Authority terminates the Contract in whole or in part for its convenience, the Airport Authority shall make payment to the Contractor for: (i) Work completed in conformance with the Contract requirements prior to termination, including a reasonable fee based on the Work completed, (ii) the Contractor's actual cost of the Work in process and materials properly transferred to the Airport Authority (which shall be limited to those materials that Contractor cannot use itself or transfer to others); (iii) the Contractor's actual costs of settling claims by Subcontractors or others for actual costs that are rendered unrecoverable by the termination (e.g. restocking charges, not to exceed twenty percent of the material costs, imposed by vendors for accepting material back, non-refundable security deposits, materials purchased but not installed which cannot be returned to the vendor or used elsewhere, and termination charges for leased equipment), provided however, that the Contractor shall use its best efforts to mitigate such penalties or damages; and (iv) the Contractor's other actual direct costs of carrying out the termination, including costs necessarily incurred to protect property in the Contractor's possession in which the Airport Authority has an interest until disposal instructions from the Airport Authority has been received. The Airport Authority's obligations to the Contractor upon termination shall not exceed those the Airport Authority would have had to the Contractor in the absence of termination. The Airport Authority shall also pay to the Contractor fair compensation either by purchase or rental at the election of the Airport Authority for any equipment retained by the Airport Authority. The Contractor shall not receive any fee or profit on account of Work not completed.

14.3.5 Within thirty (30) calendar days after the effective date of termination of the Contract, the Contractor shall submit to the Airport Authority an itemized statement of all amounts claimed by the Contractor under this Paragraph 14.3. The Airport Authority shall have no obligation for and shall not be required to make payments to the Contractor, directly or on account of claims by Contractor's Subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development, architect/engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general administrative burden charges (unrelated to the actual administration of the termination as provided above), resulting from the termination of the Contract. The Airport Authority, upon payment of any approved accrued amounts so invoiced, shall have no further liability or obligation to the Contractor whatsoever for any further fees, expenses or payment. By

accepting the payment, the Contractor confirms that it has been compensated in full. The Airport Authority may audit the Contractor's records before payment to verify the amounts requested in the Contractor's termination claim. Under no circumstance shall the Contractor be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. The Contractor shall, as a condition of receiving the payments referred to in this subparagraph, execute and deliver all such documents and take all such steps as reasonably requested by the Airport Authority, including the legal assignment of its contractual rights under such obligations or commitments, including, at the Airport Authority's option, on a case by case basis, each Subcontract previously entered into by the Contractor and approved by the Airport Authority.

14.3.6 If, after notice of termination of the Contract by the Airport Authority for any of the causes listed in Paragraph 14.2, it is determined that the Contractor was not in breach or default, the termination shall be deemed to have been for the convenience of the Airport Authority. In such event the Contractor may recover from the Airport Authority payment in accordance with this Paragraph 14.3.

14.4 ORDERLY TERMINATION

14.4.1 If the Airport Authority terminates the Work or a portion thereof pursuant to this Article 14, irrespective of whether the Contractor disputes the Airport Authority's right to terminate the Contract, the Contractor shall, except as otherwise directed by the Airport Authority:

- .1 Stop work under the Contract to the extent of the work that is terminated as specified in the notice of termination;
- .2 Enter into no further purchase orders, Subcontracts or other commitments for materials, equipment, services or other elements of the Work, except as may be necessary to make the Work and the site safe and to complete any portion of the Work that is not terminated or assigned;
- .3 Terminate all purchase orders and Subcontracts and settle all outstanding liabilities and claims arising out of the termination of the Contract, upon terms and conditions satisfactory to the Airport Authority, and submit within thirty (30) days after the effective date of termination a final report listing all Subcontractors, Suppliers, creditors and other parties to which the Contractor has incurred financial obligations in connection with the Contract, and the status of payment to all such parties and any claims or potential claims from such parties, and including copies of all supporting receipts and other documents evidencing the expenditure of funds by the Contractor relating to the Contract;
- .4 Transfer title and deliver to the Airport Authority (i) the fabricated or unfabricated parts, equipment, work in process, supplies and other materials produced or acquired in connection with the execution of the terminated and/or assigned Work, and (ii) all plans, drawings, work product, documents, materials including all schedules, lists or data bases required to be maintained and other property (whether in hard copies or in electronic or magnetic media) which, if the Contract had not been terminated and/or the designated Subcontracts not assigned, the Contractor would have been required to furnish to the Airport Authority or which are necessary for an orderly transition of the assigned Subcontracts to the Airport Authority or substitute contractors, and carry out such directives as the Airport Authority may issue concerning the safeguarding or disposition of files and property;
- .5 Take such action as may be reasonably necessary, or as the Airport Authority may direct, to protect and preserve the property related to the Contract and/or the assigned Subcontracts that is in the possession of the Contractor and in which the Airport Authority has or will acquire an interest;
- .6 Complete performance of any part of the Work not terminated or assigned;
- .7 If directed by the Airport Authority, use its best efforts to sell any property referred to in Clause .5, above, in a manner, at times and at a price or prices authorized or directed by the Airport Authority, provided that the Contractor shall not be required to extend credit to any purchaser, and the Contractor may, itself, acquire any such property at a price not less than the Contractor's costs. The proceeds of any such sale or disposition shall be applied in reduction of any payments to be made by the Airport Authority to the Contractor or paid in such manner as the Airport Authority may direct;

- .8 If the Airport Authority exercises its right to assignment, (i) assign to the Airport Authority, as owner of the Work, or to any substitute contractor(s) designated by the Airport Authority, all of the right, title and interest of the Contractor in each designated Subcontract, including purchase orders and agreements with Suppliers, vendors and service providers, and (ii) execute and deliver all instruments and documents and take such steps as the Airport Authority may require to fully vest the Airport Authority or its designated substitute contractor(s) with all of the Contractor's right, title and interest, including any benefits and information, with respect to such Subcontracts; and
- .9 After securing the Work and the site, immediately vacate the same, taking no action that will interfere with or obstruct the commencement or continuation, by the Airport Authority or any other person or entity, of efforts to complete the Work.

14.4.2 Upon termination of the Contract, whether under Paragraph 14.2 or 14.3 or upon Final Completion of the Work, all records, data, plans, drawings, notes, reports and other documents ("Records") prepared by the Contractor under this Contract or in anticipation of this Contract shall, at the option of the Airport Authority, become the Airport Authority's exclusive property, whether or not in the possession of the Contractor. The Records shall be free from any claim or retention of rights on the part of the Contractor. The Contractor acknowledges that any intentional failure or delay by the Contractor to deliver the Records to the Airport Authority will cause irreparable injury to the Airport Authority not adequately compensable in damages and for which the Airport Authority has no adequate remedy at law. The Contractor will pay the Airport Authority \$500.00 per day as liquidated damages, and not as a penalty, for each day after demand by the Airport Authority until it delivers the Records to the Airport Authority. The Airport Authority may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records, which relief the Contractor hereby consents to, as well as all applicable damages and costs. The Airport Authority shall have unrestricted use of the Records for the purpose of completing the Work or for any other purpose. Each party will assist the other party in the orderly termination of the Contract.

ARTICLE 15

DISPUTES

15.1 CLAIMS, COUNTERCLAIMS, DISPUTES

15.1.1 All claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Contract or the breach thereof shall be processed in accordance with the provisions of this Article, and compliance with the provisions hereof is a condition precedent to commencement by the Contractor of any action in a court of law or equity. All claims are subject to audit by the Airport Authority's internal audit staff or consultants.

15.1.2 A "claim" means a written demand or assertion by the Contractor seeking an adjustment in the Contract Sum and payment of monies due, an adjustment of the Construction Duration, an adjustment or interpretation of other Contract terms or requirements, or other relief arising under or relating to the Contract; provided that a Contractor Change Notice, Contractor Change Request, Change Proposal or other written demand or assertion by the Contractor seeking the payment of money or an extension of time is not a claim under this Article until certified as required below. A voucher, invoice, Application for Payment or other routine request for payment that is not in dispute when submitted is not a claim under this Article.

15.2 WHEN NOTICE AND CLAIM SUBMITTAL BECOME DUE

15.2.1 For any claim under this Article to be valid, it shall be based upon a written Contractor Change Notice and Contractor Change Request delivered by the Contractor to the Airport Authority promptly, but in no event later than twenty (20) days, after the occurrence of the event or circumstance upon which the Contractor Change Request is based, and stating the nature of the claim, as provided in Subparagraph 11.5.2, or upon a Change Order issued by the Airport Authority as provided in Subparagraph 11.3.2. A written claim submittal, identified as such, with all supporting cost data and schedule impact analysis (which claim submittal shall comply with all requirements applicable to a Contractor Change Request or a Change Proposal as provided in Subparagraph

11.5.2 and Paragraph 11.7) and the Contractor's affidavit as provided in Paragraph 15.3 below, shall be delivered to the Airport Authority within twenty-one (21) days after the Airport Authority's determination on the Contractor Change Request as provided in Subparagraph 11.5.6, or the Airport Authority's issuance of a Change Order as provided in Subparagraph 11.3.2, as applicable (unless the Airport Authority approves an additional period of time to ascertain more accurate data in support of the claim). The responsibility to substantiate claims shall rest with the Contractor. Failure to provide a Contractor Change Notice and Contractor Change Request within the time periods specified, or failure to provide a complete claim submittal within the time required in accordance with this Paragraph, shall be conclusively deemed to be a waiver of the claim, including all matters arising out of the event, occurrence or circumstance giving rise to the claim.

15.3 REQUIREMENTS FOR CONTRACTOR CLAIMS

15.3.1 For all claims by the Contractor seeking an increase in the Contract Sum or an extension of the Construction Duration, the Contractor shall submit with the claim an affidavit certifying that:

- .1 the claim is made in good faith, and the amount claimed accurately reflects the adjustments in the Contract Sum or the Construction Duration for which the Contractor believes the Airport Authority is liable, and covers all direct, supplemental, indirect, consequential, serial and cumulative costs and delays to which the Contractor is entitled as a result of the occurrence of the event or circumstance giving rise to the claim; and
- .2 supporting cost and pricing data are current, accurate, complete and represent the best of the Contractor's knowledge and belief;

The affidavit shall refer to the specific Drawings, Specifications and other Contract Documents affected by or related to the claim. The affidavit shall be executed by the Contractor's Project Manager or Project Executive.

15.3.2 All claims for an extension of the Construction Duration shall be supported by a full analysis of the schedule impact of the event, occurrence or circumstance giving rise to the claim, including the schedule impact of any work claimed to be required as a consequence of such event, occurrence or circumstance. Such analysis shall be based upon the Baseline CPM Schedule.

15.4 DETERMINATION ON A CLAIM

15.4.1 Provided that the Contractor has certified the claim if required pursuant to Paragraph 15.3 above, the Airport Authority will make a determination on the claim within 90 days after receipt of the Contractor's certification affidavit, or will, within such 90 day period, notify the Contractor of the date by which such determination will be made. The Airport Authority's determination shall be final, conclusive and binding, unless the Contractor objects to such determination by written notice within 21 days after receipt of the Airport Authority's determination and thereafter commences an action in a court of competent jurisdiction within the time permitted by law, subject to the provisions of Paragraphs 15.5 and 15.6 below. Failure to give notice of objection within such 21 day period shall be conclusively deemed to be a waiver by the Contractor of any objection to such determination and a waiver of any further claims with respect to the matter.

15.4.2 Pending final resolution of any claim, including litigation, the Contractor shall proceed diligently with performance of the Work, and comply with any decision of the Airport Authority.

15.5 NEGOTIATION

15.5.1 If the Contractor objects to the Airport Authority's determination with respect to any claim in accordance with Paragraph 15.4 above, either party may refer the dispute to the Contractor's designated Project Executive and the Airport Authority's designated Project Executive, who shall meet within fourteen (14) days of such referral and endeavor to resolve the claim. Participation in and completion of this negotiation process is a condition precedent to either party seeking to resolve the claim through court action as provided in Paragraph 15.6.

15.6 LITIGATION

15.6.1 If the parties are unable to resolve a claim within one hundred twenty (120) days following the date on which the Airport Authority's determination with respect to the claim is issued, the aggrieved party shall have the right to file a court action seeking judicial resolution of the claim; provided that no action shall be filed in a court seeking resolution of any claim until following completion of all Work under the Contract Documents or earlier termination of this Contract. All such actions, together with any other outstanding claims or disputes, shall be aggregated for trial in a single action.

15.6.2 The Contractor, and all Subcontractors, Suppliers and any other persons or organizations performing any part of Work, agree that each of them will waive jurisdiction and venue and shall submit to the jurisdiction of the Circuit Court of Wayne County, of the State of Michigan regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the Contract or the bidding, award or performance of the Work.

15.6.3 Neither the Contractor nor any Subcontractor, Supplier or any other person or organization claiming by or through any such party shall commence any action, other than in the Circuit Court of Wayne County, of the State of Michigan, against the Airport Authority or any of its partners or consultants, or any of their respective members, directors, officers, employees, representatives or agents, with regard to any matter whatsoever arising out of or relating to the validity, construction, interpretation or enforcement of the Contract.

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 SUCCESSORS AND ASSIGNS

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

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

16.2 ADDITIONAL INFORMATION

Recognizing that the Airport Authority may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the Contractor or any Subcontractor shall, without limitation of any other requirements of the Contract Documents, promptly provide to the Airport Authority upon request statements, documents or information regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the Contractor or any Subcontractor with the Contract Documents, the names

of Subcontractors or suppliers, amounts due or to become due or amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the Contractor's performance under the Contract Documents as the Airport Authority may reasonably require. Upon completion of the Work, the Contractor will provide to the Airport Authority, or to others as requested by the Airport Authority, a certification (in form acceptable to such parties) that the Work has been completed in accordance with the Contract Documents, and as to compliance by the Contractor with the requirements of the Contract Documents and such other matters within the scope of the Contractor's performance under the Contract as the Airport Authority may require.

16.3 INFORMATION CONFIDENTIAL

The Contractor and all Subcontractors and Suppliers shall treat as confidential any information relating to the Project that is specifically designated or identified by the Airport Authority as confidential or proprietary, and shall not permit release of such information to other parties without the Airport Authority's prior express written authorization.

16.4 GOVERNING LAW

The Contract shall be governed by the laws of the State of Michigan.

16.5 PUBLICITY; SIGNAGE

Neither the Contractor nor any Subcontractor shall issue or permit to be issued any marketing materials, advertisements, press releases or other publicity or literature of any kind which refers to the Airport, the Airport Authority or the Project, including images of the Project, without the prior written approval of the Airport Authority, which approval may be given or withheld in the Authority's sole discretion. The Contractor shall not display or permit to be displayed any signs, posters or other advertising material on or around the Project Site unless previously approved in writing by the Airport Authority in its sole discretion. At the Airport Authority's direction, any such posters and signs displayed without such approval shall be removed and the surface to which such posters or signs were affixed restored by the Contractor.

16.6 ENTIRE AGREEMENT

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

16.7 INDEPENDENT CONTRACTOR

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

16.8 WAIVER

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

16.9 RIGHT TO AUDIT CONTRACTOR'S RECORDS

16.9.1 The Contractor shall maintain all financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the Airport Authority.

16.9.2 The Airport Authority has the right to examine and audit all books, records, documents and other supporting data, as the Airport Authority deems necessary, of the Contractor, or any Subcontractors or agents performing Work under this Contract, whether direct or indirect, so as to permit adequate evaluation of the Work performed by the Contractor. The Contractor must include a similar covenant allowing for the Airport Authority audit in any agreement it has with a Subcontractor or other agent related to this Contract. The Airport Authority may delay payment to the Contractor pending the results of any such audit without penalty or interest.

16.9.3 The Contractor shall make available to the Airport Authority, or its authorized representatives, at any time Monday through Friday, inclusive, between the hours of 8:00 a.m. and 5:00 p.m., at the Airport Authority's election, at that location among its offices at which the Contract is principally performed or which is closest and most convenient for the Airport Authority's auditors, all records, books, statements, reports or other pertinent information that the Airport Authority deems necessary concerning the Contractor's and any Subcontractor's performance of the Work under this Contract, as may be required for audit purposes. The Contractor shall make its staff available to answer all questions and provide all information reasonably necessary to complete both a financial and compliance audit of the Contract. If, in the course of such inspections, representatives of the Airport Authority should note any deficiencies in the performance of the Work of the Contractor, or any other deficiencies, the alleged deficiencies will be reported to the Contractor in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the Airport Authority.

16.9.4 If, as a result of any audit conducted by or for the Airport Authority, the State of Michigan or any federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the Contractor shall pay to the Airport Authority on demand the amount of compensation in question. If the Contractor fails or refuses to make payment, in addition to any other legal remedies available to the Airport Authority, the Airport Authority may retain said amount from any funds allocated to the Contractor but not yet disbursed under the Contract or may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties.

16.9.5 A breach of Section 16.9 constitutes a material breach of the Contract sufficient to warrant termination, the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration for the Contract, and debarment from further work for the Airport Authority for up to three (3) years.

16.9.6 The Contractor and its Subcontractors shall maintain all documents referred to above, and all other records, correspondence, memoranda, instructions, drawings, sketches and other documents and data (including documents and data in electronic form) relating to the Contract or Subcontractors for a period of three (3) years from the date each receives final payment under their respective contracts. If the Contract is funded, in whole or in part, by federal and/or state funds, the Contractor and its Subcontractors shall maintain all such documents for a period of three (3) years after the Airport Authority completes its final audit, or such longer period as may be

required by Applicable Laws. The Contractor shall make this a condition of any Subcontract with its Subcontractors. The Contractor shall maintain all documents at that location among its offices in which the Contract is principally performed or which is closest and most convenient for the Airport Authority's auditors.

END OF GENERAL CONDITIONS

SECTION 12 – SUPPLEMENTAL TERMS AND CONDITIONS

WAYNE COUNTY AIRPORT AUTHORITY

SUPPLEMENTAL TERMS AND CONDITIONS

DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR
WAYNE COUNTY AIRPORT AUTHORITY
CONSTRUCTION CONTRACTS**

1. RIGHT TO INSPECT PLANT

The Airport Authority has the right to inspect that part of the plant, place of business, or work site of the Contractor, or any subcontractor thereof of any tier, which is pertinent to the performance of the Contract.

2. NON-DISCRIMINATION PRACTICES

The Contractor must comply with:

- a. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- b. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- d. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- e. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

The Contractor must not:

- a. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, or sexual orientation, religion, familial status, height or weight.
- b. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- c. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- d. Except as permitted by applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial statue, height or weight, of perspective employees. Contractor also shall not make or keep a record of that information or disclose such information.
- e. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex, or sexual orientation.

The Contractor must notify any subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The Contractor will include the provisions of this Article in any subcontract, as well as provide the Airport Authority with a copy of any subcontract agreement.

The Contractor and its subcontractors must not discriminate against minority business enterprises or women business enterprises (as defined in the Wayne County Airport Authority Procurement and Contracting Ordinance) in selecting and retaining subcontractors to perform work on this Contract.

The Contractor and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

Contractor acknowledges the right of the Airport Authority to sue to enforce the provisions in this Article of the Contract.

If the Contractor, does not comply with the non-discrimination and affirmative action provisions of this Contract, the Airport Authority may impose sanctions, as it determines to be appropriate, including but not limited to:

- a. the withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
- b. cancellation, termination or suspension of this Contract, in whole or in part; and/or

If the Contract is funded, in whole or in part, by federal funds:

- a. Contractor's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination;
- b. Contractor must provide immediate notice to the Chief Executive Officer, or his designee, when a subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in the Wayne County Airport Authority Procurement and Contracting Ordinance; and
- c. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Airport Authority to be appropriate for that purpose, provided the Airport Authority has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of the Wayne County Airport Authority Procurement and Contracting Ordinance, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

3. BUY AMERICAN PREFERENCES

3.01 The Contractor shall comply with the following:

- a. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are

expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:

1. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs b. (1) or (2) shall be treated as domestic.
 2. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.
 3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.
- b. The Contractor assures that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except those:
1. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
 2. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
 3. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

4. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

4.01 During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- A. Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's

obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport Authority or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Airport Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the contractor under the contract until the contractor complies, and/or
2. Cancellation, termination, or suspension of the contract, in whole or in part.

F. Incorporation of Provisions. The Contractor shall include the provisions of subparagraphs 1 through 5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Airport Authority to enter into such litigation to protect the interests of the Airport Authority and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5. AIRPORT & AIRWAY IMPROVEMENT ACT OF 1982, § 520 - GENERAL CIVIL RIGHTS PROVISIONS

5.01 The Contractor 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 obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

6. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

6.01 No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making

of any Federal grant and the amendment or modification of any Federal grant.

- 6.02** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

7. ENERGY CONSERVATION REQUIREMENTS

- 7.01** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

8. BREACH OF CONTRACT TERMS

- 8.01** Any violation or breach of terms of this Contract on the part of the Contractor or their subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

9. RIGHTS TO INVENTIONS

- 9.01** All rights to inventions and materials generated under this Contract are subject to regulations issued by the FAA and the Airport Authority of the Federal grant under which this Contract is executed.

10. TRADE RESTRICTION CLAUSE

- 10.01** The Contractor or subcontractor, by execution of this Contract, certifies that it:
- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
 - b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
 - c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this Section 10 are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Airport Authority cancellation of the Contract at no cost to the Government.

- 10.02** The Contractor agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

- 10.03** The Contractor shall provide immediate written notice to the Airport Authority if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.
- 10.04** This certification is a material representation of fact upon which reliance was placed when entering into this Contract. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Airport Authority cancellation of the Contract or subcontract for default at no cost to the Government.
- 10.05** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this Section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10.06** This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, US Code, Section 1001.

11. VETERAN'S PREFERENCE

- 11.01** In the employment of labor (except in executive, administrative, and supervisory positions), Contractor shall give preference to Veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. DAVIS BACON LABOR REQUIREMENTS

- 12.01** The Contractor shall comply with the following:

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.
2. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is

performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

3. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination..
4. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
5. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
6. The wage rate (including fringe benefits where appropriate) determined pursuant to this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
7. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
8. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding.

1. The Federal Aviation Administration or the Airport Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by

the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Airport Authority, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records.

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
2. The Contractor shall submit weekly, for each week in which any Contract work is performed, a copy of all payrolls to the Airport Authority for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under this Section. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - a. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under this Section and that such information is correct and complete;

- (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section.
4. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
5. The contractor or subcontractor shall make the records required under this Section available for inspection, copying or transcription by authorized representatives of the Airport Authority, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Airport Authority, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees.

1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or

subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- E. Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- F. Compliance With Copeland Act Requirements.
 1. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- G. Subcontracts.
 1. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime

contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

H. Contract Termination: Debarment.

1. A breach of the contract clauses in this Section may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

I. Compliance With Davis-Bacon and Related Act Requirements.

1. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

J. Disputes Concerning Labor Standards.

1. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

K. Certification of Eligibility.

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

13. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

- A. Overtime Requirements. The Contractor nor any subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall not require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph A above, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable

to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A above.

- C. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the Airport Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B above.
- D. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

14. CLEAN AIR AND WATER POLLUTION CONTROL

The Contractor agrees, and will require its subcontractors to agree:

- A. That any facility to be used in the performance of the Contract or subcontract or to benefit from the Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- B. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- C. That, as a condition for the award of this Contract, the Contractor or subcontractor will notify the Airport Authority of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- D. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

SECTION 13 – ATTACHMENTS

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ATTACHMENT A – SITE DIAGRAM

FOR DETROIT METROPOLITAN WAYNE COUNTY AIRPORT DE-ICING FLUID FORCE MAIN ROUTE

**To view or download Attachment A - Site Diagram in PDF format, access the following web link:
http://www.metroairport.com/pdf/attachment_A_2-03-09.pdf**

ATTACHMENT B – BADGE PROCESSING PROCEDURES

AIRPORT CREDENTIALS OFFICE - HOURS/LOCATION

The Airport Credentials Office is located on the 3rd floor of the L.C. Smith Terminal.

Office hours are:

Monday	8:30 a.m – 11:30 a.m. & 12:30 p.m. – 4:00 p.m.
Tuesday	8:30 a.m – 11:30 a.m. & 12:30 p.m. – 4:00 p.m.
Wednesday	8:30 a.m.– 11:30 a.m. & 12:30 p.m. – 4:00 p.m.
Thursday	8:30 a.m – 11:30 a.m. & 12:30 p.m. – 4:00 p.m.
Friday	8:30 a.m – 11:30 a.m. & 12:30 p.m. – 4:00 p.m.

*** The Credentials Office is closed for Lunch from 11:30 a.m. to 12:30 p.m.**

Office Phone:	(734) 942-3606
Fax:	(734) 942-3814
Email:	security.credentials@wcaa.us
Mailing Address:	Airport Security, Credentials Office Wayne County Airport Authority Detroit Metropolitan Airport L.C. Smith Building, Room 366 Detroit, MI 48242

Website: <http://www.metroairport.com> **Search for keyword :badge**

BADGE APPLICATION

Individuals who require unescorted access to the Air Operations Area (AOA), Restricted, Secured or Sterile Areas must possess an Airport photo ID Badge. Badge issuance is limited to those individuals who have cleared the FBI-based criminal history check as well as the TSA-based Security Threat Assessment (STA) and have a frequent and reoccurring need for access. In addition, all Badge applicants must provide documentation that establishes identity and employment eligibility (See Identification for examples). Applicants must also be based in the Detroit area and maintain a local address throughout the time they possess an Airport ID Badge. Contact the Credentials Office for information on the procedure for requesting a waiver of the local address requirement.

Application for a Badge is made on the Badge Application Form. This Form must be completely filled out, properly signed and submitted to the Credentials Office for processing. The Form will be checked by the Credentials Office for accuracy including proper signatures and dates. Badge Application Forms are available at the Credentials Office, on the Airport's website, or by fax or email, upon request. Only the "original copy" of a completed Application Form will be accepted. Do not submit a photo copy; it will not be accepted for processing.

There is a \$20.00 processing fee for each Application processed for airlines/tenants/vendors. Billing invoices will be generated on a monthly basis and mailed to each company. Contractors are required to pay for all Badges at the time of issuance or renewal (\$300 deposit and \$20 processing fee for each Badge and a \$15 renewal fee - photo or non-photo). See Procedures for Badging Contractors.

IDENTIFICATION

All Badge applicants must present two (2) forms of identification or documentation when applying for an Airport ID Badge. At least one ID must have been issued by a Government Authority and at least one must include a photo. The documentation must be able to verify the applicant's identity as well as employment eligibility. See examples below:

Documents that establish Identity

Valid Driver's License
Valid State ID Card
Passport
LEO Credentials
Federal, State, Local Government ID
High School/University ID
Resident Alien Card

Documents that establish employment eligibility

Birth Certificate
Social Security Card
U.S. Passport
Permanent Resident Alien Card
U.S. Citizen ID Card
Certification of Naturalization
Native American Tribal Document

AUTHORIZING SIGNATURE FORM

Each company that requests Airport ID Badges must identify one or more responsible company employees as "Authorizing Signers". Only Badge Application Forms signed by an "Authorizing Signer" will be accepted for processing. Names of individuals authorized to sign Badge Application Forms for a particular company are on file in the Credentials Office. Each Badge Application submitted for processing will be checked to ensure that it is authorized by one of the designated individuals. Only individuals who possess an Airport photo ID Badge may be Authorizing Signers. The signature of an Authorized Signer on a Badge Application Form certifies that the applicant is an employee of the particular company, requires unescorted access to the AOA, and that the Application has been reviewed for completeness. The Authorizing Signer is also responsible for indicating on the Badge Application that the employee will have a need to drive on the AOA.

SECURITY TRAINING

Badge applicants must be able to comprehend the Airport's security rules, guidelines, regulations and procedures and possess the ability to perform the responsibilities associated with unescorted access privileges. To fulfill this requirement, all individuals applying for an Airport photo ID Badge must first undergo security training. Training is conducted at the Credentials Office Monday through Friday during normal business hours. Employees will undergo a self-paced interactive computerized security training program. Applicants will need to come in for processing / fingerprinting before attending the training.

As part of training, applicants must pass a test which certifies their understanding of the information presented. Those failing the test will be permitted to repeat the training after a minimum of a one-day period between training times. A request to retake the training must be made in writing, by an Authorized Signer, and will be reviewed for approval on a case-by-case basis. Questions regarding this request or any other special arrangements must be directed to the Security Credentials Manager.

FBI-FINGERPRINT CHECK

All individuals applying for an Airport ID Badge must undergo a FBI fingerprint-based criminal history check as part of the Badge issuance process. Fingerprint results must come back cleared before issuance of the Airport Photo ID Badge. Allow 1 – 5 days for fingerprint results to be returned.

The Airport will deny issuance of the Airport ID Badge to any employee who is:

- Currently being charged with or is convicted of one of the TSA disqualifying crimes within the last ten years.

DISQUALIFYING CRIMES

Federal Regulations require all employees to submit to a FBI Fingerprint Criminal History Check before receiving unescorted access privileges. The Criminal History check verifies that there have been no convictions of any of the TSA disqualifying crimes within the past ten years. A copy of the Criminal History results will be made available to the employee upon receipt of a written request (form may be obtained from the Credentials Office).

- A felony involving illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.
- Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon
- A felony involving possession or distribution of stolen property
- A felony involving dishonesty, fraud, or misrepresentation
- A felony involving theft
- A felony involving burglary
- Armed robbery or felony unarmed robbery
- A felony involving importation or manufacture of a controlled substance
- Distribution of, or intent to distribute a controlled substance
- A felony involving aggravated assault
- Rape or aggravated sexual abuse
- A felony involving bribery
- A felony involving willful destruction of property
- A felony involving a threat
- Murder
- Assault with intent to murder
- Kidnapping or hostage taking
- Felony arson
- Extortion
- Carrying a weapon or explosive aboard an aircraft
- Conveying false information and threats
- Commission of certain crimes aboard an aircraft in flight
- Destruction of an aircraft or aircraft facility
- Interference with flight crew members or flight attendants
- Forgery of certificates, false making of aircraft and other aircraft registration violations
- Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements
- Interference with air navigation
- Espionage
- Aircraft piracy outside the special aircraft jurisdiction of the United States
- Aircraft piracy
- Improper transportation of a hazardous material
- Lighting violations involving transporting controlled substances
- Sedition
- Treason
- Violence at international airports
- Conspiracy or attempt to commit any of the aforementioned criminal acts.

SECURITY THREAT ASSESSMENT

All individuals applying for an Airport ID Badge must undergo a TSA Security Threat Assessment (STA) as part of the Badge issuance. The Airport will not issue an Airport ID Badge until the TSA has completed an STA on the applicant. Allow 2 – 5 days for the STA to be completed.

WARRANT CHECKS

The Airport conducts warrant checks on a daily basis for all individuals who have been issued, or are renewing their Airport ID Badge. The Airport will suspend the unescorted access privileges of any individual with an outstanding arrest warrant.

RENEWAL

There is a \$15 (fifteen dollar) renewal processing fee for each badge renewed. This fee will be billed to the Company at the end of each month. It is the responsibility of each individual to renew his or her Badge. Airport ID Badges are issued with an expiration date that is no more than 1 year from the individual's birth month. All employees are required to undergo Security Refresher Training upon renewal. The refresher training is approximately 15 minutes in length. Failure to renew the Airport ID Badge prior to the expiration date will result in a \$10 (ten dollar) late fee charged to the individual, as well as mandatory recurrent (Full Length) Security Training. The late fee must be paid and recurrent training must be completed prior to re-authorization of the ID Badge.

ISSUANCE OF TEMPORARY IDENTIFICATION BADGES

Temporary Identification Badges are available for individuals who have an operational need to be in a security sensitive area and who do not possess an Airport ID Badge. These Temporary ID Badges are valid only for the date issued. The use of a Temporary ID Badge requires the escort of an Airport photo Badged individual with the escort authority designation at all times while in the SIDA or sterile area.

Temporary ID's may be obtained at the Airport Credentials Office or at Landside Services (located at the Ground Transportation Bldg. - lower level, in front of the L.C. Smith Terminal and in the McNamara Parking deck.) Individuals requesting Temporary ID must present photo ID and be accompanied by a person who possesses an Airport photo ID Badge with the escort authority designation. Temporary ID's will only be issued for a total of 3 consecutive days to the same individual.

BADGE REPLACEMENT

Badges that have been lost or stolen must be reported **immediately** to the Credentials Office. This notification will allow the Credentials Office to "revoke" the lost or stolen Badge in the Security Card Access System, so if found, the Badge cannot be used to gain access.

Individual's who require a replacement Badge must fill out a "Badge Replacement Form" before a replacement may be issued. This Form must be signed by the Authorizing Signer for the company. Badge Replacement Forms are available in the Credentials Office.

The replacement costs are as follows:

- 1st Replacement: \$100 (\$80 deposit; \$20 processing fee)
- 2nd Replacement \$200 (\$180 deposit; \$20 processing fee)
- 3rd Replacement is at the discretion of the Security Director

Contractor Replacement \$320 (\$300 deposit; \$20 processing fee)

Deposits will be refunded if the lost or stolen card is returned to the Credentials Office.

RETURN OF DTW ID BADGES

It is the responsibility of each company to maintain accountability of all DTW ID Badges issued to their employees. Badges must be retrieved and returned to the Airport when an individual no longer requires access to the AOA, Restricted or Secured Areas, resigns, is terminated, retires, is laid-off, on strike, or is on medical or maternity leave. Badges must be returned to the Credentials Office on a "Separation

Form” within 3 days (72 hours) of the separation. (Note: Contractor Badges are valid only for the construction project for which they were issued. Upon completion of the project, all Badges must be returned.)

In cases when an ID Badge is not retrieved from the individual at the time of separation, the Credentials Office must be notified, by telephone or in person, **within eight (8) hours.** In cases of termination for cause, and the company does not have the ID Badge, notification must be made **immediately.** Upon this notification, the Credentials Office will “revoke” the individual’s access authority in the Security Card Access System, to prevent them from accessing the AOA, Restricted or Secured Areas. In these cases, a Separation Form must still be filled out and submitted, indicating what steps the company has taken to retrieve the ID Badge from the individual. All Badges issued to your company must be accounted for. Failure to notify the Airport about any ID Badge that you can no longer account for is a violation of the Airport Security Plan and may result in administrative sanctions and/or civil penalties. A \$100 Failure to Return Fee will be charged if the ID Badge is not returned to the Credentials Office within (90) ninety days from the date of separation / deactivation. This fee of \$100.00 per Badge is Non-Refundable!

ID BADGE AUDITS

The Transportation Security Administration requires that the Airport regularly audit ID Badge records to ensure accuracy and accountability. Audits (either “paper” or “physical”) will be conducted bi-annually with all companies who participate in the Airport Badge System. Paper Audits will include a listing of all DTW ID Badges issued to a particular company. Companies will be required to review the list, ensuring that all individuals are still employed by them, still require Airport access, and are in possession of their DTW ID Badge. Physical Audits, in addition to a review and certification of the employee listing by each company, will require each badge holder to report to a specific location for a physical inspection of their ID Badge. Failure to complete Audits as requested will result in the suspension of Airport ID Badge issuance privileges.

RECORD KEEPING

Companies are required to maintain records pertaining to ID Badge Issuance for all employees. These records must be maintained for the duration of time that the employee is with the company, and up to 180 days from the date of termination/separation. It is recommended that companies keep this documentation in a separate file; remember, it is subject to audit by the Airport or TSA. Records must be made available to the Airport for inspection to determine compliance with all security requirements. The records shall include, but not be limited to the following:

- a) A copy of the Badge Application
 - b) A copy of the Separation Form
 - c) CHRC (if conducted by the Airline)
 - d) Any other information as required by the Airport Chief Executive Officer (CEO).
- Each company must provide the Airport with the location the records will be stored and the name or title and phone number of the individual who maintains the records. This information is maintained on the Authorizing Signature or Delegation of Authority Form.

ATTACHMENT C – WAYNE COUNTY AIRPORT AUTHORITY ETHICS ORDINANCE

To view or download Attachment C Wayne County Airport Authority Ethics Ordinance in PDF format, access the following web link: <http://www.metroairport.com/pdf/ethics.pdf>

(If you received this document electronically, Attachment C - Wayne County Airport Authority Ethics Ordinance is a separate document and must be accessed on the web).