

'Attachment D'
CMAR RFP

(page 1 of 8)

Sample CONTRACT AGREEMENT

THIS AGREEMENT made on this the ____ day of _____, 2020 by and between the Mobile Airport Authority hereinafter referred to as (OWNER), and _____, hereinafter referred to as (CONTRACTOR), and in consideration of the mutual covenants hereinafter set forth, do agree as follows:

OWNER:

Mobile Airport Authority
1891 9th Street
Mobile, Alabama 36615

CONTRACTOR:

DESIGNER:

PROJECT:

ARTICLE 1 - SCOPE OF WORK:

1.1

1.2 Exclusions:

ARTICLE II - CONTRACT DOCUMENTS:

2.1 Construction documents – see attachment ‘?’

ARTICLE III – CONTRACT TIME:

3.1 Duration _____ calendar days once NTP is executed

3.2 LIQUIDATED DAMAGES. OWNER and CONTRACTOR recognize that time is of the essence with respect to this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extension(s) thereof allowed in accordance with the General Provisions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual losses suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as Liquidated Damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER the amount stipulated in Section _____ of the General Provisions for each calendar day that expires after the time specified in Paragraph 3.1 for Completion of the Work.

- 3.3 CONTRACTOR understands and hereby expressly agrees that, in addition to, or in lieu of, Liquidated Damages specified in Paragraph 3.2 above, to pay the OWNER the actual costs to OWNER for any inspector or inspectors necessarily employed by OWNER on the Work and the actual costs to OWNER for the ENGINEER's / ARCHITECT's observation of construction, and project representative services including all travel and subsistence expenses after the date specified for completion until the Work is completed and ready for final payment.
- 3.4 Further, the CONTRACTOR agrees that the sums to be paid to the OWNER in accordance with Paragraphs 3.1 and 3.2 above may be deducted from the sum due the CONTRACTOR for work performed as provided in the General Provisions.

ARTICLE IV - CONTRACT SUM:

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the applicable Contract Documents (scope of work) in current funds as follows:

Payment will be made for completed AND accepted Work. The approved total Contract Price is (amount spelled out) \$(XXXXXXXX.00).

- 4.2 See attachment '?' / Unit Pricing

... provide estimated quantities in the unit pricing to facilitate bidding of the two-2 projects.

ARTICLE V - PAYMENT PROCEDURES:

- 5.1 CONTRACTOR shall submit Applications for Payment for completed work in accordance with the General Provisions. The CONTRACTOR shall submit an itemized Application for Payment for Work supported by data substantiating the right to payment. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the OWNER, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing. CONTRACTOR warrants all work in place.
- 5.2 All work for payments received to be free and clear of liens, claims, or security interests.
- 5.3 The CONTRACTOR shall promptly pay each subcontractor and supplier, upon receipt of payment from the OWNER, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders. Neither the OWNER nor the Consultant shall have responsibility for payments to a subcontractor or supplier. A progress payment, or partial or entire use or occupancy of the Project by the OWNER, shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
- 5.4 % retainage held.

ARTICLE VI - CONTRACTOR'S REPRESENTATION:

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that, in any manner, may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress,

performance, or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated in the Contract Documents. No additional examinations, investigations, explorations, tests, reports or studies or similar information or data are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
- 6.4 CONTRACTOR must provide written notice of all conflicts, errors, and/or discrepancies that he/she has discovered within the work.

See RFP for insurance requirements

ARTICLE VII - INSURANCE REQUIRMENTS:

- 7.1 Automobile Liability – The automobile liability insurance shall be in an amount no less than One Million Dollars (\$1,000,000.00) for property damage, One Million Dollars (\$1,000,000.00) for each occurrence.
- 7.2 Liability Insurance:
 - Commercial General Liability \$1,000,000.00
 - Excess/Umbrella Liability \$1,000,000.00
- 7.3 Waiver of Subrogation: CONTRACTOR waives, for CONTRACTOR and subcontractor’s insurers, rights of subrogation against OWNER under all insurance policies required by Subcontract.
- 7.4 Workers’ Compensation – Licensee shall maintain Worker’s Compensation insurance coverage in such amounts and under such policies as are required by the State of Alabama.
Minimum limits of coverage:
 - Limits
 - Workmen's Compensation: \$1,000,000.00
- 7.5 Additional Insured – A current Certification of Insurance must be kept on file in the Administration Office which Names the Mobile Airport Authority as An Additional Insured.
- 7.6 CONTRACTOR will indemnify, protect, defend and hold harmless the Mobile Airport Authority, its officers, directors, employees, and agents, from and against any and all claims, actions, damages, liabilities, judgments, losses, penalties, charges, costs and expenses, including, without limitation, attorneys’ fees and costs of litigations, except to the extent caused solely by the negligent act or omission of the Mobile Airport Authority.
- 7.7 Within seven (7) days after the date of the Contract, CONTRACTOR will submit to CONTRACTOR two copies of certificates evidencing such insurance and obligating the insurance company to provide thirty (30) days written notice to OWNER and CONTRACTOR prior to cancellation or material change in coverage.

ARTICLE 8 - MISCELLANEOUS:

- 8.1 No assignment, by a party hereto, of any rights under, or interests in, the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.2 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to

the other party hereto; its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

- 8.3 PERMITS: If necessary, CONTRACTOR shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The OWNER shall obtain and pay for other necessary approvals, easements, assessments, and charges.
- 8.4 INTENT: The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR.
- 8.5 CORRECTION OF WORK: CONTRACTOR shall promptly correct rejected / non-compliance work at no cost to OWNER. OWNER RESERVES THE RIGHT TO STOP THE WORK if the CONTRACTOR fails to correct Work which is not in accordance with the Contract Documents. The OWNER may direct the CONTRACTOR in writing to stop the Work until the correction is made. If CONTRACTOR fails to make the necessary corrections the OWNER has the right to carry out the work.
- 8.6 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS: The OWNER reserves the right to perform construction or operations related to the Project with the OWNER's own forces, and to award separate contracts in connection with other portions of the Project. The CONTRACTOR shall coordinate and cooperate with the OWNER's own forces and separate CONTRACTORS employed by the OWNER.
- 8.7 In all cases where the CONTRACTOR is delayed, obstructed, or hindered in the execution of the Work, or any part thereof, for any reason whatsoever, the CONTRACTOR shall not be entitled to claim or recover any damages or additional payment from the OWNER, ENGINEER / CONSULTANT. However, it is the intent of the Agreement that in all cases where the Contractor substantially delayed, obstructed, or hindered in the execution of the Work through no fault of the CONTRACTOR and because of conditions beyond the CONTRACTOR's control, the ENGINEER / CONSULTANT may recommend an extension on the Contract Time in accordance with the terms hereof by such amount as conditions, in the judgement of the ENGINEER / CONSULTANT justify, and such extension of the Contract Time shall be the exclusive remedy of the CONTRACTOR for delay, hindrance, or obstruction occurring through no fault of the CONTRACTOR and because of conditions beyond the CONTRACTOR's control.
- 8.8 EXECUTION of the Contract by the CONTRACTOR is a representation that the CONTRACTOR has visited the site, become familiar with site conditions and correlated personal observations with requirements of the Contract Documents and report any errors, inconsistencies, or omissions to the Designer and/or OWNER.
- 8.9 The CONTRACTOR shall prepare and submit a CONTRACTOR'S CONSTRUCTOIN SCHEDULE for the Work.
- 8.10 CONTRACTOR to provide the necessary skill and supervision to manage and complete the work. Provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities / services necessary for proper execution and completion of the Work.
- 8.11 Provide One (1) year labor & material WARRANTY that warrants (1) materials and equipment furnished will be new and of good quality: (2) the Work will be free from defects.
- 8.12 SECURITY REGULATIONS AND CIVIL PENALTIES: The CONTRACTOR agrees to comply with all Federal Security Regulations and all other applicable security procedures as directed by the [Airport Security Coordinator]. If the TSA, in the performance of its airport certification or random inspections, imposes a fine on the OWNER for CONTRACTOR's non-compliance, then CONTRACTOR shall immediately reimburse and indemnify the OWNER for the entire amount of the fine, unless CONTRACTOR's non-compliance directly resulted from his/her compliance with the directions given by the [Airport Security Coordinator]. In such case, the OWNER shall immediately reimburse and indemnify CONTRACTOR for

finer paid by CONTRACTOR, and the OWNER shall bear the full cost of any fine assessed against the OWNER or the CONTRACTOR.

The CONTRACTOR agrees to bear full responsibility for any and all penalties that may be levied against the OWNER by any local, state, or federal agency arising as a result of any act or omission of the CONTRACTOR, its employees, agents, subcontractors, or other related persons or entities, unless penalty directly resulted from CONTRACTOR's compliance with directions given by the OWNER. In such case, the OWNER shall bear the full cost of any penalty assessed against the OWNER or the CONTRACTOR.

- 8.13 USE OF SITE: CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the OWNER.
- 8.14 CLEAN UP: CONTRACTOR shall keep the premises and surrounding area free from accumulation of debris and trash. Once the project is completed, the CONTRACTOR shall remove its tools, construction equipment, machinery, surplus material and shall properly dispose of waste materials.
- 8.15 INDEMNIFICATION: to the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER, OWNER's consultants, agents, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss/expense is caused in part by a party indemnified hereunder.
- 8.16 CHANGES IN WORK: OWNER may order changes in the Work within the general scope consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the OWNER and CONTRACTOR cannot agree to a change in the Contract Sum, the OWNER shall pay the CONTRACTOR its actual cost-plus reasonable overhead and profit.
- 8.17 The CONTRACTOR shall be responsible for (1) initiating, maintaining, and supervising all SAFETY precautions and programs; (2) take reasonable precautions to prevent property damage (including adjacent thereto) and injury or loss to employees.
- 8.18 TESTS AND INSPECTIONS: CONTRACTOR, if necessary, shall coordinate and arrange tests & inspections; the OWNER will bear the cost.
- 8.19 The OWNER may TERMINATE the Contract if the CONTRACTOR (1) repeatedly refuses or fails to supply enough properly skilled workers or proper materials; (2) fails to make payment to subcontractors and/or suppliers for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors and/or suppliers; (3) persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or (4) is otherwise guilty of substantial breach of a provision of the Contract Documents. Should the Contract be terminated, and formal notice is provided, the OWNER may take possession of the site and of all materials and finish the Work by whatever reasonable method the OWNER may deem expedient.
- 8.20 TERMINATION BY THE OWNER FOR CONVENIENCE: The OWNER may, at any time, terminate the Contract for the OWNER's convenience and without cause. The CONTRACTOR shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. This fee, or final payment to be an amount mutually agreed upon by the CONTRACTOR and the OWNER, based on the agreed Scope of Work. If there is no mutual agreement, the [Contract Administrator] will determine the percentage of completion of each task detailed in the Scope of Work and the CONTRACTOR's compensation will be based on this determination. The OWNER will make final payment within Ninety (90) days after delivery and acceptance of the last of the

partially completed items or Work. CONTRACTOR will not be paid for any work done upon receipt of the Notice of Termination, nor for any cost incurred by CONTRACTOR's Suppliers and/or Subcontractors, which CONTRACTOR could have reasonably avoided.

8.21 GOVERNING LAW AND SEVERABILITY: The laws of the State of Alabama govern all matters arising out of, or relating to, this Agreement, except to the extent that federal law applies, including, without limitation, its formation, validity, interpretation, construction, performance and enforcement. The venue for any legal proceeding arising out of this Agreement shall be in a federal or state court located in Mobile County, Alabama.

If any provision of this Agreement shall be determined to be invalid, unlawful, void, or unenforceable to any extent, then the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.

8.22 AIRPORT RULES AND REGULATIONS: CONTRACTOR and all subcontractors agree to review and comply with the latest revision of the "Airport Rules and Regulations" and "Minimum Standards" in connection with the performance of its services hereunder.

8.23 MANDATORY FEDERAL CONTRACT PROVISIONS: CONTRACTOR and all subcontractors agree to comply with the "Mandatory Federal Contract Provisions, General Provisions" in connection with the performance of its services hereunder.

8.24 Terms used in this Agreement, which are defined as General Provisions, will have the meanings indicated in the General Provisions.

8.25 SUBORDINATION OF AGREEMENT: This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the Mobile Airport Authority and the United States of America relative to the operation or maintenance of the Airport, execution of which has been required as a condition precedent to the transfer of federal rights or property to the Authority for airport purposes or to the expenditure of federal funds for the improvement or development of the Airport.

ARTICLE 9 - EVENTS OF DEFAULT & REMEDIES:

9.01 DEFAULTS: COMPANY will be deemed to be in default of this AGREEMENT upon the occurrence of any of the following:

- A. The failure or omission by CONTRACTOR to perform its obligations under this AGREEMENT or the breach of any terms, conditions and covenants required herein.
- B. The conduct of any business or performance of any acts at the Airport not specifically authorized in this AGREEMENT, failure to perform any of the provisions of this AGREEMENT, or by any other agreement between the OWNER and the CONTRACTOR, and CONTRACTOR'S failure to discontinue that business or those acts within ten (10) days of receipt by CONTRACTOR of written notice from the OWNER to cease such activity(s).
- C. The divestiture of CONTRACTOR'S estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
- D. The appointment of a trustee, custodian or receiver for all or a substantial portion of CONTRACTOR'S assets; or the insolvency of CONTRACTOR; or if CONTRACTOR will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or any state thereof including the filing of an voluntary petition of bankruptcy by

the CONTRACTOR or the institution of proceedings against the CONTRACTOR for the adjudication of CONTRACTOR as bankrupt pursuant thereto.

- E. CONTRACTOR'S violation of an Alabama statute involving or concerning felony criminal activity on contracts with public entities.

9.02 OWNER'S REMEDIES:

In the event of any of the foregoing events of default enumerated in this Article, and following ten (10) days' notice by OWNER and CONTRACTOR has failed to cure, OWNER, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law:

- A. Terminate CONTRACTOR'S rights under this AGREEMENT and, in accordance with law, CONTRACTOR will remain liable for all payments or other sums due under this AGREEMENT and for all damages suffered by OWNER because of CONTRACTOR'S breach of any of the covenants of this AGREEMENT; or
- B. Treat this AGREEMENT as remaining in existence, curing CONTRACTOR'S default by performing or paying the obligation which CONTRACTOR has breached. In such event, all sums due shall become immediately due and payable as well as interest thereon, from the date such fees or charges became due to the date of payment, at twelve (12) percent per annum or to the maximum extent permitted by law.
- C. No waiver by OWNER at any time of any of the terms, conditions, covenants, or agreements of this AGREEMENT, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by CONTRACTOR.
- D. Unless, OWNER elects to cancel this AGREEMENT, CONTRACTOR will remain liable for and promptly pay any and all payments accruing hereunder until termination of this AGREEMENT as set forth in this AGREEMENT or until this AGREEMENT is cancelled by OWNER.

9.03 CONTRACTOR'S REMEDIES:

Upon thirty (30) days' written notice to OWNER, CONTRACTOR may terminate this AGREEMENT and all its obligations hereunder, if CONTRACTOR is not in default of any term, provision or covenant hereunder or in the payment of any fees or charges to OWNER, and only upon or after the occurrence of any of the following events: (1) the inability of the CONTRACTOR to use the Airport for a period of longer than ninety (90) consecutive days preventing the CONTRACTOR from operating its business for a period of ninety (90) consecutive days, provided, however that such inability is not due to any fault or negligence of the CONTRACTOR.

In the event, it is determined by a court of competent jurisdiction that OWNER has wrongfully terminated this AGREEMENT, then such termination shall be automatically deemed a termination for convenience pursuant to the applicable terms of this AGREEMENT

10.0 CONTRACTOR'S REMEDIES:

Attachments

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective _____ and expires on _____.

OWNER:

Mobile Airport Authority

By: _____
(Signature)

Its: _____
(Title)

(Corporate Seal)

Attest: _____

CONTRACTOR:

By: _____
(Signature)

Its: _____
(Title)

(Corporate Seal)

Attest: _____

Certificate of Responsibility Number
License Number: _____

ENGINEER / CONSULTANT:

By: _____
(Signature)

Its: _____
(Title)

(Corporate Seal)

Attest: _____