

# BAA CONSTRUCTION CONTRACT

(Small Projects)

THIS BAA CONSTRUCTION CONTRACT (the "Contract") made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_ (the "Contractor"), and Birmingham Airport Authority, a public corporation organized under the laws of the State of Alabama d/b/a Birmingham-Shuttlesworth International Airport, whose address is 5900 Airport Highway, Birmingham, AL 35212 (the "Owner").

For purposes of this Contract, the term "Contract Documents" shall mean and consist of this Contract, any Project drawings, any Project specifications, addenda agreed upon and issued prior to execution of this Contract, other documents listed in this Contract and modifications (including change orders) issued after execution of this Contract, all of which form the Contract, and are as fully a part of the Contract as if attached to this Contract or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

For purposes of this Contract, the term "Work" shall mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. In the even that any of the terms and conditions in any other Contract Documents conflict with terms and conditions in this Contract, the terms and conditions of this Contract shall govern.

## WITNESSETH:

For the consideration hereinafter named, the Contractor and the Owner agree and bind themselves as follows:

**Section 1. The Work.** The Contractor shall and will provide all labor and services, including installation and handling of materials, equipment and supplies furnished by the Owner which are called for and needed in connection with the below described Work, and shall provide such other materials, equipment and supplies not furnished by the Owner called for and needed in connection therewith, and shall fully and completely perform the following which shall be included in the Work:

For the following project (the "Project"): \_\_\_\_\_

Located in the Building or at the real property with an address of: 5900 Airport Highway, Birmingham, AL 35212.

According to the plans, specifications and/or other drawings prepared by the following architect or engineer, if any, and dated as follows: \_\_\_\_\_ (the "Architect").

## Section 2. Standard of Care; Licenses; Badges.

A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Sum is \$100,000.00 or more, or if the Contractor is required to be licensed by the Alabama State Licensing Board for General Contractors, the Contractor does hereby certify that Contractor is currently licensed by the Alabama State Licensing Board for General Contractors and that the certificate for such license bears the following:

License No.:

Bid Limit:

Classification:

The Contractor has all other licenses and permits required by the State of Alabama and the City of Birmingham, Alabama to perform the Work. The Contractor represents that it has substantial experience with projects of this type and is familiar with the requirements of this type of Work. The Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect, as necessary, in furthering the interests of the Owner, to furnish efficient business administration and superintendence, to use its best efforts to furnish at all times an adequate supply of skilled workers and materials, and to perform the Work in an efficient manner. Nothing herein shall be deemed or construed to (1) make Contractor the agent or employee of Owner, or the Architect; or (2) create any partnership, joint venture, or other association between the Owner and Contractor or the Architect and the Contractor. Any direction or instruction by the Owner or the Architect in respect of the Work shall relate to the results the Owner or the Architect desires to obtain from the Work, and shall in no way affect the Contractor's independent contractor status as described herein. If there is no Architect on the Project, all references herein to the Architect shall mean the Owner.

B. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of or under the direction of the Contractor or any of its Subcontractors.

C. The Contractor shall obtain any necessary or appropriate construction or other permits to perform the Work from any and all municipal and/or governmental authorities. In performing the Work, Contractor shall abide by all applicable laws, rules and regulations, including, but not limited to, any Rules and Regulations of Owner (a copy of which has been furnished to Contractor).

D. The Contractor shall cause its employees, subcontractors and other persons carrying out the Work to park in the parking spaces located in: \_\_\_\_\_. At no time shall Contractor's employees, subcontractors or other persons carrying out the Work park in the Visitor parking spaces, along the curbs or common area roads, or in the loading docks serving the Building or real property.

E. In order to perform Work on-site in secured areas of Owner's facilities, personnel are required to undergo a background check and obtain a badge allowing them access to such areas. On completion of the Work, the Contractor's personnel are required to turn their badges in to Owner's security department. Failure to return a badge on completion of the Work will result in a fine in the amount of \$500. The Contractor is responsible for paying all badging fees and all fines for badges not returned after the Work is completed. In connection with the provision of Work, the Contractor may incur expenses to the Owner or the Owner may be charged for expenses of the Contractor. Contractor will pay or reimburse the Owner for such expenses within thirty (30) days after the date of the invoice. If the Owner owes the Contractor any fees on completion of the Work and any badging fees, fines or other expenses owed by the Contractor are then due and payable, Owner will have the right to deduct and offset the badging fees, fines and other expenses from the fees then owed to the Contractor. If the amount due to Owner exceeds the amount of fees due to Contractor or there are no fees then due to the Contractor, Owner will invoice and the Contractor will pay the badging fees, fines and other expenses incurred within thirty (30) days after the date of the invoice. Failure to pay all badging fees, fines and other expenses in full may prevent the Contractor from competing for future contracting opportunities with Owner.

### **Section 3. Contact Sum.**

A. The Owner agrees to pay the Contractor, in accordance with the provisions of Sections 3 and 4 hereof and subject to any increase or decrease resulting from changes and change orders that may be agreed upon pursuant to this Contract, an amount equal to \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_) (the "Contract Sum"). The Contract Sum may be reduced by the sum of the amounts paid by the Owner for materials, supplies or equipment, if any, purchased by the Owner for the completion of this Project.

B. If requested by the Owner or the Owner's lender, the Contractor shall prepare and submit to the Owner (or lender as applicable), a budget and schedule for the Work along with any other information reasonably requested by the Owner's lender.

**Section 4. Applications for Payment.** Based on the Contractor's applications for payment (or invoices) submitted to the Owner every \_\_\_\_\_ days, the Owner shall pay the Contractor as follows:

The Owner shall make payment to the Contractor not later than thirty (30) days after receipt of such application for payment (or invoice), subject to, however, the Owner's right to withhold payment in the event that the Work for which payment is sought, has not been completed in accordance with the terms of this Contract or for any other reason permitted under this Contract. The Owner and the Contractor represent and acknowledge that all payments to the Contractor shall be subject to retainage of 5% until the Project is 50% complete, as determined by the Architect, after which no additional retainage shall be withheld; provided, however, that Owner may continue to withhold the 5% retainage previously held until the Work has reached final completion. Final payment of the Contract shall be paid in accordance with Section 5.

### **Section 5. Payments.**

A. Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (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 Owner or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or (7) failure to carry out the Work in accordance with the Contract Documents.

B. Upon the Contractor's submittal of each application for payment to the Owner, or as otherwise reasonably requested by the Owner or its lender, the Contractor shall provide a certification to the Owner, or, if requested by the Owner, to the Owner's lender, stating and attaching, as applicable, the following:

(1) that all of the Work at the Project for which payment is sought pursuant to the application for payment has been completed in good and workmanlike manner, and in accordance with applicable law and the Contract Documents;

(2) identifying each person, subcontractor or material supplier that has supplied materials or labor in connection with the Work for which payment is sought;

(3) stating that each subcontractor or person providing materials (for which payment is sought) has been or will be paid in full upon the Owner's payment pursuant to such application for payment;

(4) a copy of any license, permit or other approval by any governmental authority required in connection the Work for which payment is sought; and

(5) such other evidence as the Owner, or the Owner's lender may reasonably request, evidencing that the Work for which payment is sought has been fully completed and will be properly paid by the Contractor.

C. The Contractor agrees to furnish, if and when requested by the Owner in the Owner's sole and absolute discretion, any and all releases and waivers of liens, or affidavits from the Contractor or any subcontractor, evidencing that all bills for materials and labor have been paid. Such affidavits and lien waivers shall be supported by receipted bills and other supporting documentation, including but not limited to the information required in Section 5B, if required by the Owner. The Owner reserves the right to pay any outstanding past due obligations of the Contractor arising as a result of the Work by checks made payable jointly to the Contractor and its vendor or contractor, or made payable solely to such vendor or contractor. Any such payments shall apply as a payment on this Contract.

D. Once the Contractor believes that the Work has been fully completed, the Contractor shall submit to the Owner an itemized final application for payment (or invoice) for the Work. Such application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require. Upon receipt of such final application for payment and all supporting materials reasonably required by the Owner, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner shall make final payment to the Contractor, subject to the Owner's right to withhold payment in whole or in part, if in the Owner's reasonable opinion the Work or a portion thereof has not been completed in accordance with the Contract Documents or for any other reason for withholding payment as set forth in this Contract.

E. Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens (from the Contractor and Subcontractors, if required by the Owner), and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract, if so requested by the Owner.

F. The Contractor shall promptly pay each subcontractor and supplier, upon receipt of any payment from the Owner, including the final payment, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

G. The Owner shall not have responsibility for payments to a subcontractor or supplier, unless otherwise determined by the Owner in its sole and absolute discretion.

H. In the event that there exists, or subsequently exists at any time after final payment by the Owner under this Contract, any mechanics', materialmen's or laborers' lien or claim or any other lien or claim, legal or equitable, contractual, or statutory, on the Work caused to be filed by a subcontractor, sub-subcontractor, material supplier or laborer in connection with the Work, the Contractor herein agrees to indemnify, defend and hold harmless the Owner from any such lien or claim and immediately satisfy payment of such lien so as to cause the lien to be immediately released and satisfied (which such indemnification shall not be interpreted to limit any other indemnification provision set forth in the Contract between the Owner and the Contractor).

**Section 6. Bonds.** If the Contract Sum is \$50,000.00 or more, the Contractor shall, at the Contractor's expense, furnish to the Owner a Performance Bond and a Payment Bond, each in a penal sum equal to 100% of the Contract Sum. Each bond shall be in form and substance as required by *Alabama Code* § 39-1-1 (1975), shall be executed by a surety company ("Surety") acceptable to the Owner and duly authorized and qualified to make such bonds in the State of Alabama in the required amounts, shall be countersigned by an authorized, Alabama resident agent of the Surety who is qualified to execute such instruments, and shall have attached thereto a power of attorney of the signing official. All Contract change orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the change order form. The Surety waives notification of any Contract change orders involving only extension of the Contract Time. The provisions of this Section are not applicable to this Contract if the Contract Sum is less than \$50,000.

A. Through the Performance Bond, the Surety's obligation to the Owner shall be to assure the prompt and faithful performance of the Contract and any change orders. The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by change orders. In case of default on the part of the Contractor, the Surety shall take charge of and complete the Work in accordance with the terms of the Performance Bond. Any reasonable expenses incurred by the Owner as a result of default on the part of the Contractor, including architectural, engineering, administrative, and legal services, shall be recoverable under the Performance Bond. The obligations of the Contractor's Performance Bond Surety shall be coextensive with the Contractor's performance obligations under the Contract Documents; provided, however, that the Surety's obligation shall expire at the end of the one-year warranty periods of Section 14.

B. Through the Payment Bond the Surety's obligation to the Owner shall be to guarantee that the Contractor and its subcontractors shall promptly make payment to all persons supplying labor, materials, or supplies for, or in, the prosecution of the Work, including the payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the Bond. Any person or entity indicating that they have a claim of nonpayment under the Bond shall, upon written request, be promptly furnished a certified copy of the Bond and Construction Contract by the Contractor, Architect, Owner, whomever is recipient of the request.

**Section 7. Contract Time.** The date of commencement of the Work shall be the date of this Contract unless otherwise indicated below. The Work shall be completed in \_\_\_\_\_ (\_\_\_\_) days from the date of commencement (the "Contract Time").

Insert the date of commencement if it differs from the date of this Contract: \_\_\_\_\_.

**Section 8. Time of Essence; Defaults.** Time is of the essence in the performance of this Contract. If the Contractor should be adjudged a bankrupt, or if the Contractor should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of the Contractor's insolvency, or if the Contractor should fail to carry forward and complete the Work as provided in this Contract as rapidly as the Owner may judge that the progress of the structure or structures will permit, or if the Contractor should become insolvent or should fail to make prompt payment for material or labor used on the job, or should fail to comply with instructions of the Architect or with applicable portions of law or ordinances, or if the Contractor should otherwise in any way whatsoever be guilty of a breach of this Contract, then the Owner may without prejudice to any other right or remedy terminate the Contract after giving 7 days written notice of the intention to do so, may thereupon take control of the Work covered by this Contract and may take possession of all materials, whether in transit to the job site, on the job site, or stored at any place other than the job site for use in, on, or about the Project at the time of giving of such notice of intention, may also take possession of all equipment, tools, instruments, construction equipment, and machinery owned or rented by the Contractor and on the Project site at the time of giving of such notice of intention and complete the Work by whatever method the Owner deems expedient, in which case the Contractor shall not be entitled to receive any further payments until the Work is completed. If the unpaid balance under this Contract shall exceed the costs and expense of finishing the Work including compensation for additional managerial and administrative services, satisfaction of any outstanding obligations of the Contractor arising on this job and all other expenses made necessary by the termination of the Contract, the excess shall be paid to the Contractor. If such expense is greater than such unpaid balance, the Contractor shall pay the difference to the Owner.

In the event of any default hereunder on the part of the Contractor, all cost and expenses connected with or incident to ascertaining, determining and collecting losses and damages sustained, incurred or suffered by the Owner, including without limiting the generality hereof, all engineering and legal services, shall be the obligation of the Contractor, and shall be paid by the Contractor, for the performance of the Work and payment of labor and materials hereunder, due to be furnished by the Contractor to the Owner.

**Section 9. Employment Related Taxes.** The Contractor assumes exclusive liability for all contributions, taxes, or payments required to be made because of employees of the Contractor by the Federal and State Unemployment Compensation Acts, Social Security Acts or any amendments thereto, and by all other or future acts, local, state or federal, requiring the payment of similar contributions to taxes, and for all sales tax and use tax.

#### **Section 10. Insurance.**

A. The Contractor, for the protection and benefit of the Owner and any and all of its partners, officers, directors, shareholders, beneficiaries, agents and employees (collectively, the "Indemnitees") and in satisfaction of the Contractor's obligations, shall specifically procure, pay for, and maintain, in full force and effect until final payment (unless otherwise designated), at no expense to the Owner, policies of insurance to be written by an insurer approved by the Owner, who is lawfully authorized to do business in the State in which the Project is located and which shall, as a minimum, afford the types and limits of coverage set forth in Exhibit A hereto. All insurance policies shall be written in a company or companies lawfully authorized to do business in Alabama and are required to have minimum A.M. Best financial rating of A minus, 8 (A-, VIII). All such insurance policies shall provide that coverage is primary and non-contributory, include a waiver of subrogation and provide the Owner with at least thirty (30) days prior written notice of any cancellations or modification thereof. The Owner shall be named as an additional insured on all policies except Workers' Compensation and the Professional Liability/E&O policies. The additional insureds provision shall read: Birmingham Airport Authority, City of Birmingham, Alabama and their respective directors, council members, agents and employees.

B. The Contractor shall provide the Owner with copies of the insurance policies or certificates evidencing that the required coverages are in place. Certificates of Insurance shall be filed with the Owner prior to commencement of the Work on a Certificate of Insurance form, or Certificates, policies, or endorsements acceptable to the Owner. If such insurance coverages are not issued on an occurrence basis, such insurance coverages are required to remain in force after the termination or expiration of this Contract. If such insurance coverages are required to remain in force after the expiration or termination of this Contract, an additional certificate evidencing continuation of such coverage shall be submitted prior to final payment to the Contractor. If the Contractor's coverage is written on a claims-made basis, the Contractor shall also provide tail coverage to include claims made after the completion of the Work for the required statute of repose. In the event the Contractor fails to furnish the Owner with evidence of insurance and maintain the insurance as required, the Owner upon ten (10) days prior written notice to comply, may, but shall not be required to, procure such insurance at the cost and expense of the Contractor, and the Contractor agrees to promptly reimburse the Owner for the cost thereof. Payment shall be made within thirty (30) days of invoice date. If the Contractor has any subcontractor performing any of the Work, the subcontractor is subject to the same insurance requirements outlined in this Exhibit A unless waived or reduced by the Owner. The Contractor is advised of the statutory immunity from tort claims applicable to the Owner and its directors, which is contained in § 4-3-50 and § 4-3-47(2) of the Code of Alabama, 1975.

**Section 11. Indemnification.** The Contractor shall indemnify, defend and save and hold harmless and exonerate the Owner, the City of Birmingham, Alabama, and their respective directors, council members, agents and employees (collectively, "Indemnitees"), of and from all liability and loss for claims and demands for bodily injury, death and property damage arising out of, in the course of, incidental to or in whatever manner the same may be caused or occasioned in or about the Work undertaken by the Contractor, its employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of or under the direction of, the Contractor or any of its subcontractors, and arising out of, in the course of, or incidental to the Work, or in whatever manner the same may be occasioned in or about any other operation, no matter by whom performed, for and on behalf of the Contractor, whether or not and even though caused, occasioned or contributed to in whole or part by the negligence, sole or concurrent, of the Indemnitees.

In claims against any Indemnitees indemnified under this Section 11 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 11 shall not be limited by a limitation on amount of type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

#### **Section 12. Change Orders.**

A. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by change order. A change order shall be based upon written agreement among the Owner, the Contractor and the Architect (if applicable).

B. Claims for extra compensation or time extensions will only be allowed where written authorization has been given and agreed upon prior to execution of the Work entitling the Contractor to extra compensation or time extensions. The Contractor shall proceed with any extra work ordered notwithstanding the failure or inability to agree on the amount of extra compensation or time extensions for such work.

**Section 13. Site Cleanup.** It is fully understood that the Contractor will be responsible for keeping the Project site clean and in an orderly fashion subject to the approval of the Owner and the Architect. Should it become necessary for the Owner to incur any expenses performing cleanup work for the Contractor, such expenses will become subject to deduction from the Contract Sum.

#### **Section 14. Warranties.**

A. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the Work will be free from defects, and that the Work will conform with the requirements of the Contract. Work not conforming to the requirements of the Contract Documents (including substitutions not properly approved and authorized), within a period of one (1) year from the date of final payment, will be corrected or replaced at the Contractor's expense. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. The provisions of this Section 14 apply to Work, including all labor and materials undertaken by the subcontractors as well as to Work, including labor and materials undertaken by direct employees of the Contractor.

C. The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor for an additional year, but only as to the corrective Work (labor and materials) and any inseparable components of such corrective Work.

D. Nothing contained in this Section 14 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Section 14.A. relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

E. All guarantees or warranties of materials furnished to the Contractor or any subcontractor by any manufacturer or supplier shall be deemed to run for the benefit of the Owner. The Contractor shall and does hereby assign to the Owner the benefits of all warranties and guarantees directly furnished to the Contractor or furnished by any and all subcontractors (or the subcontracts themselves if necessary to perfect such assignment), but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract or at law.

#### **Section 15. Subcontractors.**

A. The term subcontractor as used herein shall mean a person or entity who has an agreement with the Contractor to perform a portion of the Work at the Project or that is performing portions of the Work directly or indirectly for, or on behalf of or under the direction of the Contractor.

B. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of the subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any subcontractor to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. Contracts between the Contractor and subcontractors shall (1) require each 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 has assumed toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, and to assume toward the Owner, and (2) allow to the subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

**Section 16. Site Conditions.** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and become familiar with the local conditions under which the Work is to be performed.

#### **Section 17. Safety; Compliance with Laws.**

A. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable measures and precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss, including but not limited to all requirements under the Occupational Safety and Health Act. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible. The foregoing obligations of the Contractor are in addition to and shall not be deemed to limit in any manner, the Contractor's obligations under Section 11. The Owner shall have no responsibility to ensure that the Contractor provides a safe working environment and/or complies with occupational safety and health laws, rules and regulations.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the Architect and the Owner of the Drawings and Specifications are observed by the Contractor to be at variance therewith.

**Section 18. Governing Law; Venue.** This Contract shall be governed by the laws of the State of Alabama. Any action to enforce this Contract shall be instituted solely and exclusively in the Circuit Court of Jefferson County, Alabama or in the United States District Court for the Northern District of Alabama.

**Section 19. No Assignment.** Neither this Contract, nor the Work, nor any portion thereof to be done under this Contract, nor the moneys nor any portion thereof to become due under this Contract, shall be assigned as collateral security or otherwise, by the Contractor without the prior written consent of the Owner, and on such assignment without such prior written consent, the Owner shall have the right, at its sole option, to terminate this Contract and the rights of the Contractor hereunder.

**Section 20. Counterparts; Electronic Signatures.** This Contract may be executed in counterparts which will be construed together as one instrument. It shall not be necessary when making proof of this Contract to produce counterparts with original signatures, it being agreed that photocopies of signatures or signatures received by facsimile transmission shall have the same effect as original signatures.

**Section 21. General.**

A. Non-Discrimination. Contractor agrees to abide by the Nondiscrimination Requirements set forth in Exhibit B attached hereto and incorporated herein by reference.

B. Notices. All written notices required or otherwise provided hereunder will be sent by certified or registered mail (return receipt requested), reputable courier with shipment tracking capabilities, postage prepaid, facsimile, e-mail, or hand delivery to the address for each party appearing on the first page of this Contract. All notices to the Owner shall include a mandatory copy to: Maynard, Cooper & Gale, P.C., Attention: David Smith, 1901 Sixth Avenue North, Suite 1700, Birmingham, Alabama 35203; Email: dsmith@maynardcooper.com; Facsimile: (205) 254-1999. Notices will be deemed to have been given when delivered.

C. Immigration. The Owner is committed to complying with all applicable immigration laws of the United States, including the Immigration Reform and Control Act of 1986, as amended, which act requires that all employees hired since 1986 provide proof of identity and employment eligibility before working in the United States. The Contractor shall not place any of its employees at the Project worksite, nor shall the Contractor permit any of its employees, nor any of its contractors or subcontractors, or their respective employees, to perform any Work on behalf of or for the benefit of the Owner without first verifying and ensuring their authorization to lawfully work in the United States. The Contractor acknowledges, agrees, and warrants (a) that the Contractor maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment, (b) that the Contractor has verified the identity and employment eligibility of all of its employees in compliance with applicable law, (c) that the Contractor has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to the Contractor's senior management, (d) that the Contractor has implemented a policy to verify the validity of Social Security information provided by its employees at the time of hire by the Contractor, (e) that the Contractor is without knowledge of any fact that would render any of its employees or any of its contractors or subcontractors, or their respective employees, ineligible to legally work in the United States, and (f) that the Contractor will promptly notify the Owner in writing in the event that any of its employees or any of its contractors or subcontractors, or their respective employees, that are working on the Owner's premises should lose authorization to legally work in the United States.

D. Criminal Background Check. To the extent permitted by law, the Contractor represents and warrants that it shall conduct background investigations of each of its employees, regardless of whether or not such employees will provide Work under this Contract. Background investigations shall include, at a minimum, verification of prior employment (five to ten years where available) and criminal background checks to the extent permitted by law. The Contractor will ensure that no person performing Work for the Owner has been convicted of a felony.

E. No Third Party Beneficiaries. With the exception of the City of Birmingham, Alabama, this Contract shall not be construed to confer any rights or remedies upon any person not a party to this Contract.

F. Waiver. Any waiver of any right or provision herein will not be effective unless in writing and signed by authorized representatives of both parties. The waiver or failure of either party to exercise any right provided herein will not be deemed a waiver of any further right under this Contract.

G. Termination of Contract. In addition to any other rights and remedies allowed by law, Owner may terminate this Contract at any time for any reason, or no reason, with or without cause, by giving fifteen (15) days' written notice to the Contractor of such termination and specifying the effective date thereof. Termination of this Contract shall (i) release Owner from any future fees to the Contractor for work not performed and materials not supplied, but Owner will pay the Contractor for fees earned for work which was performed and materials which were provided prior to the delivery of the notice of termination but not yet paid, and (ii) release the Contractor from any obligation to provide further work or materials to Owner after the effective date of termination.

H. Counterparts and Telecopy Execution. This Contract may be executed and delivered by telecopy and in counterparts, each of which when executed and delivered shall be deemed an original, but all of which together shall be deemed one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

**OWNER:**

BIRMINGHAM AIRPORT AUTHORITY

By: \_\_\_\_\_  
Name: Ronald F. Mathieu  
Its: President and Chief Executive Officer

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Title)



**EXHIBIT A**

**BAA CONTRACTOR INSURANCE REQUIREMENTS  
CONTRACTOR PROVIDED INSURANCE FOR AIR-SIDE PROJECT COVERAGE**

<b><u>Type of Coverage</u></b>	<b><u>Minimum Limits</u></b>
<b>Worker's Compensation</b>	Statutory for Coverage A
<b>Employee's Liability</b>	\$1,000,000 each Accident \$1,000,000 Disease – Policy Limit \$1,000,000 per Employee
<b>Requirements:</b>	<ol style="list-style-type: none"><li>1. Voluntary Compensation Endorsement</li><li>2. Waiver of Subrogation</li></ol>
<b>General Liability</b>	\$1,000,000 each occurrence \$10,000,000 General Aggregate \$10,000,000 Completed Operations/Products Aggregate \$1,000,000 Personal Injury \$5,000 Medical Payments
<b>Requirements:</b>	<ol style="list-style-type: none"><li>1. XCU Perils Coverage</li><li>2. Completed Operations Extended 3 Years</li><li>3. Broad Form Property Damage</li><li>4. Fellow Employee Coverage</li><li>5. Primary &amp; Non-Contributory</li><li>6. Waiver of Subrogation</li><li>7. 30 Days' Notice of Cancellation to Certificate Holder</li><li>8. CG2010 and CG2037 Endorsements</li><li>9. Contractual Liability applicable to Contractor's indemnification obligations</li></ol>
<b>Business Automobile</b> and property damage	\$2,000,000 per occurrence combined limit for bodily injury liability
<b>Requirements:</b>	<ol style="list-style-type: none"><li>1. Covers owned, non-owned and hired autos</li><li>2. Primary &amp; Non-Contributory</li><li>3. Waiver of Subrogation</li><li>4. 30 Days' Notice of Cancellation to Certificate Holder</li></ol>
<b>Umbrella</b>	\$10,000,000
<b>Builder's Risk Policy</b>	Amount of Project
<b>Requirement:</b>	<ol style="list-style-type: none"><li>1. Contractor provide coverage for Contractor's equipment on the job site and all construction material and equipment which is schedule for the Work but has not been delivered to the Job Site</li><li>2. Coverage shall insure interest of Owner and Contractor</li><li>3. Provide Replacement Cost</li><li>4. Event of Loss, proceeds of any claim shall be paid to the Owner who shall apportion the proceeds between the Owner and the Contractor as their interest may appear</li><li>5. Coverage includes flood and earth movement</li><li>6. Per Project Aggregate</li></ol>
<b>Pollution Policy</b>	\$5,000,000
<b>Professional Liability</b>	\$1,000,000

## **EXHIBIT B**

### **NONDISCRIMINATION REQUIREMENTS** **Federal Aviation Administration Required Provisions**

A. **Civil Rights – General.** Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor.

This provision obligates Contractor for the period during which the BAA remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**B. Civil Rights – Title VI Assurances – Compliance with Nondiscrimination Requirements.**

1. **Compliance with Regulations:** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** Contractor, with regard to the work performed by it during the Agreement, will 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. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the BAA or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the BAA or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the non-discrimination provisions of this contract, the BAA will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - (a) Withholding payments to Contractor under the Agreement until Contractor complies; and/or
  - (b) Cancelling, terminating or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** Contractor will include the provisions of paragraphs one through six in every subcontract,

including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the BAA or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, BAA may request the Contractor to enter into any litigation to protect the interests of the BAA. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. **Civil Rights – Title VI Clauses for Use/Access to Real Property.** Contractor for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities in Paragraph C below.

In the event of breach of any of the above nondiscrimination covenants, the BAA will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

**C. Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. **Title VI of the Civil Rights Act of 1964** (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. **49 CFR part 21** (Non-discrimination in Federally-assisted programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964);
3. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. **Section 504 of the Rehabilitation Act of 1973** (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. **The Age Discrimination Act of 1975**, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. **Airport and Airway Improvement Act of 1982** (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. **The Civil Rights Restoration Act of 1987** (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. **Titles II and III of the Americans with Disabilities Act of 1990**, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. **The Federal Aviation Administration’s Nondiscrimination statute** (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency**, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure

compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12. **Title IX of the Education Amendments of 1972**, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

D. **DBE.** Contractor acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises ("DBE"), as such regulations may be amended, and such other similar regulations as may be enacted, may be applicable to the activities of Contractor at the Airport, unless exempted by said regulations, and by choosing to operate at the Airport, Contractor shall be deemed to have agreed to comply with the regulatory agencies, in reference thereto. These requirements may include, but not be limited to, compliance with DBE participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to DBEs.